

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2209.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
and FRANK W. KETTENBACH,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2210.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
THE IDAHO TRUST COMPANY, a Corporation,
THE LEWISTON NATIONAL BANK, a Corpora-
tion, THE CLEARWATER TIMBER COMPANY,
a Corporation, ELIZABETH W. THATCHER,
CURTIS THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KETTEN-
BACH, MARTHA E. HALLETT, and KITTY
E. DWYER,

Appellees.

THE UNITED STATES OF AMERICA,

Appellant,

No. 2211.

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
and WILLIAM DWYER,

Appellees.

Transcript of Record.

VOLUME III.

(Pages 801 to 1200 Inclusive.)

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

Records of U. S. Circuit Court
appeals 786

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(Testimony of Frank J. Bonney.)

Q. Have you talked this matter over with anybody since you were at the Grand Jury last winter?

A. There has been a little joshing and roasting is all.

Q. Who have been joshing and roasting you?

A. All the fellows have been calling me a brother of Kettenbach in crime, and so on, and so forth.

Q. Have you repeated your testimony to anybody?

A. Not that I know of.

Q. Has anybody asked you to? A. No, sir.

Q. Do you remember this question being asked you last winter, when you were before the Grand Jury: "And who paid your expenses from your home to the Land Office when you made your original entry?"

"Answer. I believe Mr. Steffey gave me \$20.00."

A. Well, I might have. I couldn't say that he didn't.

Q. Did Steffey come down on the train with you?

[707—377] A. To-day?

Q. No—I mean the day that you filed on your claim? A. No, sir, I don't think so.

Q. Did you meet him here that day? A. No, sir.

Q. Who prepared your original papers?

A. I don't remember whether it was a man by the name of Williams; some—

Q. Well, how did you happen to go there? Did you ever have that man do any business for you before? A. I believe he fixed my other papers out.

Q. Did you pay him anything for it?

A. I think he charged me a dollar.

Q. And you went to the land office with that, did

(Testimony of Frank J. Bonney.)

you? A. Yes, sir.

Q. Do you remember this question being asked you, referring to Mr. Steffey: "And he was to pay your expenses going up to the land office, as I understand it?" "Answer. He never said anything about it." "Question. How did he happen to give you the \$20.00?" "Answer. Well, he just handed it to me and said, 'This is to pay your expenses.' "

A. Did I say that?

Q. I am asking you, do you remember saying that?

A. No, sir, I don't remember saying just those words.

Q. Well, do you remember Steffey giving you \$20.00 before you started down here?

A. It seems to me that Mr. Steffey gave me some money.

Q. What did he give you any money for?

A. Well, I don't know. I suppose he thought I was short, maybe, or didn't have any money there with me. I couldn't say.

Q. Was Mr. Steffey under any obligations to give you money?

A. Well, Steffey and I have been very friendly, have taken a [708—378] drink occasionally, and I could go to Steffey and always get money if I wanted it for a few days, if I needed it. I always brought my money right to home.

Q. Did anybody notify you when you were to make your final proof?

A. I believe the land office did. I couldn't say.

(Testimony of Frank J. Bonney.)

Q. And did you see Mr. Steffey between the time that you made your sworn statement and your final proof? A. I believe I did.

Q. Well, was anything said about where you were to get the money to make your proof?

A. No, sir, I don't think so.

Q. And did Steffey come down with you when you were to make your final proof? A. No, sir.

Q. Did you meet him down here?

A. I believe I met him down here.

Q. Did you meet him by appointment?

A. No, sir.

Q. Just ran across him, did you?

A. Yes, sir.

Q. And what happened then? What was said between you and Steffey then?

A. I don't remember, but I believe— I don't remember. I believe Steffey gave me some money then.

Q. Well, let me ask you: Where did you meet Mr. Steffey?

A. I think I met him just as I came down out of the building there—the land office.

Q. Did you meet him at the Lewiston National Bank? A. No, sir, I don't think I did.

Q. Did you go into the Lewiston National Bank with him?

A. Not that I know of. Not that I remember of.

[709—379]

Q. Was the Lewiston National Bank and the land office in the same building then?

A. I don't think so.

(Testimony of Frank J. Bonney.)

Q. What?

A. I don't remember. No; I believe the land office at that time was where it is now, if I remember right.

Q. And you met him out in front of there?

A. I met him right there by the land office.

Q. And were you expecting to see Mr. Steffey?

A. No, sir.

Q. And you just ran across him accidentally?

A. Yes, sir.

Q. Just a casual meeting? A. Yes, sir.

Q. Who were your final proof witnesses?

Mr. TANNAHILL.—We object to that. The record shows who his final proof witnesses were. If he is asking him regarding the record he should show him the record.

The SPECIAL EXAMINER.—Answer the question.

WITNESS.—Why, Mr. Gaffney and Mr. Erwin, I believe.

Mr. GORDON.—Q. Anyone else?

A. No, sir. I believe you only had to have two.

Q. Now, what did Steffey say to you when you met him there that day?

A. I don't know. I don't remember just now.

Q. Did he give you any money? A. Yes.

Q. How much?

A. Well, I don't know. I believe—I couldn't say—it must have been three or four hundred dollars.

Q. Wasn't it \$400.00? [710—380]

(Testimony of Frank J. Bonney.)

A. I couldn't say. It was whatever—nearly enough to prove up on the claim, I think.

Q. Wasn't it just enough to prove up on the claim? A. I don't know. I couldn't say.

Q. And did he say anything to you when he gave it to you?

A. Well, he said, "You will probably need a little money." I think that's what he said.

Q. What's that?

A. I believe that's what he said. It has been quite a while ago, and I don't remember all about it.

Q. And did you take that money which he gave you and go back in the land office and make your proof?

A. Let's see: I went down the street some place, and then went back up in the land office.

Q. Well, did you make your proof?

A. Yes, sir.

Q. And did you give them that money that Steffey gave you?

A. Well, sir, I had nearly enough money, and I used a little of that.

Q. You used a little of what?

A. Of the money that he handed me.

Q. How much of the money he handed you?

A. I don't know how much—of, probably \$50.00.

Q. And what did you do with the rest of it?

A. Why, I hung on to it.

Q. You kept it? A. Yes, sir.

Q. Didn't Steffey give you that money to make final proof?

(Testimony of Frank J. Bonney.)

A. Well, I suppose that's what he intended to do.

Q. And didn't you make the final proof with part of that money?

A. No, sir, not all of it. I had nearly enough money to make it myself. [711—381]

Q. Well, why did you take Steffey's money?

A. Well, just like everybody else; they was taking all they could get a hold of.

Q. Did you see Steffey again that day?

A. No, sir, I don't believe I did.

Q. What's that?

A. I don't believe I did.

Q. How did you expect to make proof that day if you hadn't met Steffey?

A. Well, I thought maybe I could raise a little money down here.

Q. Mr. Bonney, didn't Mr. Steffey tell you that if you would take up a timber claim he would pay all the expenses of it and give you the money to make final proof?

Mr. TANNAHILL.—We object to that as endeavoring to get the witness to say something that is not true. This is his own witness, and because Steffey says something of that kind exists is no reason why he should say the same thing.

Mr. GORDON.—I will ask the same question again: Didn't Steffey tell you that if you would take up a timber claim that Steffey would pay all the expenses, if you would convey it to him or whoever he told you to, and he would give you \$200.00 for it?

(Testimony of Frank J. Bonney.)

Mr. TANNAHILL.—We repeat the objection.

The SPECIAL EXAMINER.—Answer the question.

WITNESS.—Why, Mr. Steffey never told me that.

Mr. GORDON.—Answer the question yes or no.

A. No, sir.

Q. What did Steffey tell you?

A. He told me if I wanted to take a claim that he would guarantee me or he was positive that he could sell it so I could make \$200.00.

Q. You were not paying him anything for it, were you? A. No, sir.

Q. And why was he guaranteeing you that you could sell it? [712—382]

A. I don't know.

Q. Did he give you your \$200.00? A. Yes, sir.

Q. When did he give you that?

A. Well, I don't know. It was a month or two—whenever I sold it.

Q. Did you give him a note for the \$400.00, or the near \$400.00 that he loaned you? A. No, sir.

Q. Did you pay him any interest for it?

A. No, sir.

Q. Did you tell him when he gave it to you when you would repay him? A. No, sir.

Q. Was anything said about the \$400.00 when you got the other \$200.00? A. Yes, sir.

Q. What was said?

A. I think he counted that out, and gave me the balance.

Q. What do you mean—that he came to you and

(Testimony of Frank J. Bonney.)

had \$600.00 and counted \$400.00 out, and then gave you \$200.00 of it?

A. In figuring, he counted it out.

Q. And as a matter of fact the whole transaction turned out as you expected it would when you had your first talk with Steffey; is that correct?

A. I got my \$200.00.

Q. Well, isn't that what you understood you were to get when you had your first talk with him?

A. Yes, sir.

Q. In fact, he guaranteed that to you, didn't he?

A. Yes, sir.

Q. Do you remember this question being asked you when you were [713—383] at Moscow in November last: "Now, about this \$400.00 that he (Steffey) gave you, when did you give that back to him?" "Answer. I didn't give that back to him. I applied that on the sale of the land. I just hung on to it." Do you remember making that answer?

A. No, sir, I don't believe I did.

Q. Will you say that you didn't make that answer?

A. No; I may have said it. I may not have understood it.

Q. Is there anything incomprehensible about this question? I will repeat it again: "Now, about this \$400.00 that he gave you, when did you give that back to him?" Is there anything you can't understand about that?

A. I don't think I gave that back to him.

Q. Now, wait a minute. I say, is there anything

(Testimony of Frank J. Bonney.)

you can't understand about that question? You understand that, don't you? A. Yes, sir.

Q. "Answer. I didn't give that back to him. I applied that on the sale of the land." I ask you if that question was asked you, and did you make that answer?

A. Well, I don't know. I may have misunderstood that. Of course, that was intended as expenses. That is, it would be—I was to have \$200.00 above expenses.

The SPECIAL EXAMINER.—He asks you if you made that answer.

WITNESS.—Well, I don't remember.

Mr. GORDON.—[714—384] Q. This \$400.00 that Steffey gave you, did you think that was a present?

A. Well, I just supposed,—he said that he would guarantee me that I would make \$200.00 above expenses, and I supposed that maybe that might have gone in as expenses.

Q. Then, you didn't think that it was just a mere present?

A. Well, I supposed it was for the expenses, I supposed.

Q. What is that?

A. I supposed that he intended for me to take it and to pay the expenses, probably.

Q. After Mr. Steffey had given you that \$20.00 and the \$400.00, or about \$400.00, you wouldn't have felt right about selling to anybody else, would you?

A. Well, it might have knocked him out of what money he expected to make for locating me.

(Testimony of Frank J. Bonney.)

Q. You wouldn't have thought it right to have sold it to anybody else, would you?

A. Well, it probably wouldn't have been right.

Q. You felt that you were obligated to sell that to Mr. Steffey, didn't you?

A. Well, as long as he made the proposition that he thought he could sell it for me and had showed me the claim—

Q. And had put up the money?

A. And had let me have the money—

Q. Mr. Bonney, I show you timber and stone land sworn statement, dated June 27, 1906, signed Frank J. Bonney, and ask you whether or not you signed that paper and filed it in the land office on the date it bears. A. I suppose I did.

Q. Don't you know that you did.

(No answer.)

The SPECIAL EXAMINER.—That is your signature there, isn't it, Mr. Bonney? [715—385]

A. Yes, sir.

Mr. GORDON.—Q. I show you nonmineral affidavit, signed Frank J. Bonney dated June 27, 1906. Is that your signature to that?

A. Yes.

Q. I show you the testimony of Frank J. Bonney, taken on final proof, dated October 11, 1906, and ask you if that is your signature to that paper.

A. I think it is.

Q. I show you the cross-examination signed by Frank J. Bonney at final proof, and ask you if that is your signature. A. Yes, sir.

(Testimony of Frank J. Bonney.)

Q. Do you know to whom you deeded this property?

A. I don't remember, but I believe it was George L. Lester, or somebody,—I don't remember.

Q. Was it Mr. George H. Kester?

A. I don't think it was, no, sir; I don't remember. I don't think it was.

Q. Who brought the deed for you to sign?

A. Mr. Steffey.

Q. Was anybody with him? A. Yes, sir.

Q. Who? A. Mr. Todd, I think.

Q. Anybody else? A. No, sir; I don't think so.

Q. Did your wife take up a timber claim?

A. No, sir.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Frank J. Bonney, dated June 27, 1906, the nonmineral affidavit, the notice of publication, the testimony given on final proof, and the cross-examination of Frank J. Bonney, all of which have [716—386] been identified by the witness, the testimony of the witnesses on final proof, the receiver's receipt and the register's certificate, dated October 11, 1906, certified copy of the patent issued to Frank J. Bonney, and dated September 13, 1907, all of said papers relating to the entry of the east half of the southeast quarter of section 33, and the northwest quarter of the southwest quarter of section 34, township 37 north of range 5 east, Boise meridian, and lot 1, in section 4, township 36 north of range 5 east, Boise meridian. We also offer in evidence certified copy of a deed

(Testimony of Frank J. Bonney.)

dated December 20, 1906, made by Frank J. Bonney and Ada Bonney, his wife, to George H. Kester, and W. F. Kettenbach, consideration \$950.00, conveying the east half of the southeast quarter of section 33, and the northwest quarter of the southwest quarter of section 34, township 37 north of range 5 east, and lot 1 of section 4, township 36 north of range 5 east, Boise meridian, containing 162.40 acres, and executed and acknowledged before William J. Todd, Notary Public of Nez Perce County, December 20, 1906, and recorded at the request of William Dwyer December 24, 1906.

Said above mentioned documents were thereupon marked by the reporter as Exhibits 19, 19A, 19B, 19C, 19D, 19E, 19F, 19G, 19H, 19I, 19J, 19K, 19L, 19M, 19N, 19O, 19P, and 19Q.

Mr. TANNAHILL.—The defendants object to all of the documents offered relating to the final proof, and especially the testimony of claimant Frank J. Bonney, the cross-examination of claimant Frank J. Bonney, the testimony of the witness for claimant Charles H. Irwin, the cross-examination of witness for claimant Charles H. Irwin, the testimony of John Gaffney, and the cross-examination of the witness John Gaffney, and all subsequent papers relating to the final proof, upon the ground that they are incompetent, irrelevant and immaterial, occurring long after the filing of the sworn statement. The defendants severally waive any further identification of the papers offered. [717—387]

(Testimony of Frank J. Bonney.)

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Bonney, did you ever have any conversation with George H. Kester or William Dwyer or William F. Kettenbach regarding the sale of this land, before you made your final proof?

A. No, sir, I don't believe I did.

Q. As I understand you, you had no contract or agreement with anyone for the sale of the land, before you filed your sworn statement?

A. No, nothing in particular, no, sir.

Q. Or before you made your final proof?

A. No, sir.

Q. In the affidavit you made in connection with your sworn statement when you filed on your land, you say, "That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That was true when you made it, was it?

A. When he asked me there what I wanted with this land at the land office there, he asked me what I was taking it for, and I told him it was for speculation; I think that is marked there, or that is what I told him; I told him I didn't want to keep it.

(Testimony of Frank J. Bonney.)

Q. But you made no contract to convey it to anybody? A. Nobody in particular, no, sir.

Q. The only arrangement you had was that which you stated with Steffey, and he told you he would sell it for you after you got your title?

A. Yes, sir.

Q. And that he was pretty sure you could make at least \$200.00 out of it, and maybe more?

[718—388]

A. Yes, sir, that is what he told me. Well, I did make more, I believe.

Q. About how much more did you make?

A. I don't remember, but it must have been maybe \$20.00 or \$25.00 more.

Q. You think you made about \$225.00 out of it over and above expenses?

A. Yes, sir, I made \$200.00 or a little better.

Q. I will ask you to look at this deed, Mr. Bonney, and state whether or not that is the deed you signed.

A. I don't believe it was; I think it was Lester, but I may have signed this, but I think it was,—I don't believe that was Kester and Kettenbach, but, of course, that is my writing there, and it must have been. I thought it was Lester.

Q. You was probably mistaken about that,—Kester and Lester. A. That is my writing, yes.

Q. I will ask you to look over that affidavit, and state if you remember the circumstance of your signing that.

A. Yes, I remember about this, but I didn't have time to read it. (Witness reads document.) This

(Testimony of Frank J. Bonney.)

here, "for the benefit or advantage, directly or indirectly of any person," why I supposed it would be a benefit to me.

Q. At whose request did you sign this affidavit?

A. Mr. Steffey's.

Q. That affidavit is true, is it not? A. Partly.

Q. Is there any part of it that isn't true, Mr. Bonney?

A. Why, the portion that it was taken with the intention of benefit from it there—

Q. Well, you was the one that was to benefit from it? A. Certainly.

Q. That is what it means, that it was not for the benefit of anyone else, that is what the affidavit says, that it is taken for your [719—389] own benefit, and not for the benefit of anyone else. Then, with that understanding of the affidavit the affidavit is true, is it not? A. I think so.

Mr. TANNAHILL.—I ask that this be marked Defendants' Exhibit "C," for identification.

The document was thereupon marked by the reporter as Defendants' Ex. "C," for identification.

Mr. TANNAHILL.—Q. Mr. Bonney, you would not have felt right to sell this land to anyone else without giving Mr. Steffey the preference right in purchasing it, would you?

A. Why, no, sir, I think he was entitled to make anything he could over what he had guaranteed me.

Q. And that is about all the obligation you felt under to Mr. Steffey, was to give him the preference right of buying it? A. Yes, sir.

(Testimony of Frank J. Bonney.)

Redirect Examination.

(By Mr. GORDON.)

Q. This affidavit that you have identified here, marked Defendants' Exhibit "C," for identification, did you ever read that affidavit before?

A. No, sir.

Q. All that you wanted when you signed that was your \$200.00, wasn't it?

A. I will tell you, Mr. Gordon: They jumped off the stage one morning and he hurriedly explained to me what that was, told me, and while the stage waited in front there, and had to hurry in and hurry back out again.

Q. What did he tell you he wanted it for?

A. Well, sir, I don't remember.

Q. Did he tell you who sent it up to him?

A. No. [720—390]

An adjournment was thereupon taken until ten o'clock to-morrow morning. [721—391]

The hearing was resumed at ten o'clock A. M., Saturday, August 27, 1910.

[Testimony of Clinton E. Perkins, for Complainant.]

CLINTON E. PERKINS, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. What is your name? A. C. E. Perkins.

Q. What does the C. stand for? A. Clinton.

Q. Where do you reside, Mr. Perkins?

(Testimony of Clinton E. Perkins.)

A. Fraser, Idaho.

Q. How long have you resided in Fraser?

A. Twenty-two years.

Q. Are you a married man? A. Yes.

Q. Is your wife dead? A. Yes, sir.

Q. Have you any family now? A. Yes, sir.

Q. Of what does it consist? A. Six children.

Q. How old is the youngest child?

A. Seventeen months old.

Q. How many children did you have in April, 1906? A. Five.

Q. What was your occupation in April, 1906?

A. Farming.

Q. How old were you then?

A. I was forty-three.

Q. Did you own a farm in 1906?

A. Yes, sir. [722—392]

Q. What was it? A homestead? A. Yes, sir.

Q. Had you patent to it at that time?

A. Yes, sir.

Q. Was it a quarter section? A. Yes, sir.

Q. What was it worth?

A. I suppose it was worth \$2,500.00 at that time.

Q. Do you still own it? A. Yes, sir.

Q. Was there a mortgage on it at that time?

A. I don't think so.

Q. Is there a mortgage on it now? A. Yes, sir.

Q. How much? A. \$750.00.

Q. When did you put the mortgage on it?

A. About a year ago.

Q. Do you remember taking up a claim under the

(Testimony of Clinton E. Perkins.)

timber and stone act in 1906? A. Yes, sir.

Mr. TANNAHILL.—The defendants severally object to any evidence in regard to taking up the timber claim, in so far as it relates to bills No. 406 and 388, upon the ground that it is irrelevant and immaterial, the entry of the witness not being involved in these two particular actions.

Mr. GORDON.—Q. Do you know any of the defendants in these actions that we are trying?

A. Yes, sir.

Q. Mr. William F. Kettenbach?

A. I don't know him.

Q. Mr. William Dwyer? [723—393]

A. Yes, sir.

Q. Mr. George H. Kester?

A. I have met the man, that is all; I am not acquainted with him.

Q. How long have you known Mr. Dwyer?

A. Possibly three years.

Q. Mr. Perkins, I show you timber and stone land sworn statement of Clinton E. Perkins, dated April 19, 1906, and ask you if that is your signature to that paper, and whether or not you filed that in the land office about the date it bears?

A. Yes, sir, that is my signature.

Q. And you filed the paper in the land office, didn't you? A. Yes, sir.

Q. I show you nonmineral affidavit, of the same date, and ask you if that is your signature?

A. Yes, sir.

Q. I show you the notice of publication of the

(Testimony of Clinton E. Perkins.)

same date. You filed that paper at the same time, did you? A. I think so.

Q. I show you the testimony of Clinton E. Perkins, given on final proof July 12, 1906, and ask you if that is your signature to that paper?

A. Yes, sir.

Q. I show you the cross-examination of Clinton E. Perkins taken at the same time, and ask you if that is your signature to that paper? A. Yes, sir.

Q. Do you know Mr. Harvey J. Steffey?

A. Yes, sir.

Q. Did you ever have any business relations with him? A. Yes, sir.

Q. In connection with this timber claim?

A. I did.

Q. Will you state how you happened to take up a timber claim? [724—394]

A. Why, he was in the locating business, and I asked him to find me a claim, and after while he did find me one.

Q. Did he come to your house the first time you spoke to him about it? A. No, sir.

Q. You met him? A. I met him, yes, sir.

Q. And when he told you he had found you a claim, did he come to your house to advise you of that matter? A. I believe he did; I am not sure.

Q. What did he say to you about the claim when he told you that he had one that he could locate you on?

A. Why, he told me that he had found me a claim.

Q. Well, was that all?

(Testimony of Clinton E. Perkins.)

A. Well, I came down here and filed on the claim.

Q. No, but some time before you filed you went to view the land, didn't you? A. Yes, sir.

Q. At the time that you were advised by Mr. Steffey that he had found you a claim was any arrangement made as to who was to furnish the expenses of the claim?

A. I didn't have the money at the time he found the claim, and he told me that he would pay the expenses and I could pay him back.

Q. Well, was he to furnish all expenses of taking up this claim and you were to pay him back later?

A. He said he would do it.

Q. Did he tell you whether or not it was a very good claim?

A. He told me it wasn't a good claim, not a very good one.

Q. Did he tell you what you could get out of it?

A. Why, he told me that he thought I could make a couple of hundred dollars over and above what it would cost.

Q. That was before you had even gone to look at the land? A. Yes. '[725—395]

Q. Before you filed?

A. Yes. He told me that it wasn't a good claim, but he was satisfied he could sell it for me and I could make that much.

Q. Were you to pay Mr. Steffey anything for locating you? A. Yes, sir.

Q. How much?

A. I believe \$200.00. I am not sure about that.

(Testimony of Clinton E. Perkins.)

Q. And was he to loan you that money too?

A. Well, I don't know as he was to loan me that money.

Q. How far is this claim located from where you lived at that time?

A. About twenty miles, possibly.

Q. Did you and Mr. Steffey go over the claim?

A. Not at that time.

Q. When did you go over it?

A. I had been over it before. I went over it before he told me about it. I had been all over the land.

Q. You are not a timber cruiser, are you?

A. No, sir.

Q. Or a locator? A. No, sir.

Q. Do you mean you had been around in that vicinity or over this particular claim?

A. I had been on this land before a good many times.

Q. How do you know you had been on this particular land? A. How do I know I had been on it?

Q. Yes.

A. Because the old trail was right there.

Q. Is it right on the trail?

A. It is on the trail; the trail went through it.

Q. Do you know the township and range it is located in?

A. I don't now, that is, I don't remember the number.

Q. But you didn't think it necessary for you and Mr. Steffey to [726—396] go over it?

(Testimony of Clinton E. Perkins.)

A. He told me it wasn't necessary any more.

Q. Well, if you knew where this land was there and knew about the claim, why was it necessary for you to have anybody locate you?

A. Because I didn't know what was taken and what wasn't.

Q. Could they have advised you of that at the land office? A. I suppose they could; I don't know.

Q. Did you think it was worth \$200.00 for somebody to advise you that that claim hadn't been located on? A. It probably was.

Q. Didn't you know that you could have written a letter to the land office at Lewiston, and they would have told you whether or not that claim was located on, for the price of a two cent stamp?

A. I suppose I could.

Q. As I understood you to say, you didn't have the money to purchase this land. Did you have the money that you could spare to pay the expenses of locating? A. No, sir.

Q. And when you came to Lewiston to file your application to enter the tract of land, did you come alone or did someone come with you?

A. Mr. Steffey came.

Q. And he paid the carfare down here?

A. I believe he did.

Q. And all your expenses while you were here?

A. Most of them.

Q. Your actual expenses he paid while you were here, didn't he? A. Yes, sir.

Q. And your fare back to your home?

(Testimony of Clinton E. Perkins.)

A. Yes, sir.

Q. And this sworn statement that I have shown you, the first paper you filed in the land office, do you know who prepared that paper for you? [727—397]

A. I don't believe I do.

Q. Do you know whether Mr. Steffey attended to that matter for you and brought the paper to you or not?

A. No, sir, we went to some office.

Q. Do you know whose office it was?

A. I don't know; no, sir.

Q. Some lawyer's office?

A. I suppose it was; I don't know.

Q. You didn't pay any fee for having these papers prepared, did you?

A. I don't think I did.

Q. When you went to the land office there was a filing fee and a fee for publication. Is that correct?

A. Yes, sir.

Q. And Mr. Steffey paid that also?

A. Yes, sir.

Q. Now, tell exactly what Mr. Steffey informed you you would have to do to make that \$200.00.

A. Well, he told me that he was satisfied he could sell the land and I could get \$200.00 over and above expenses. He said he positively couldn't make any bargain with me, but as far as he was concerned he was a friend of mine and he was satisfied he could get me that much money.

Q. Did he tell you why he couldn't make any bargain with you?

A. I don't know as he told me why.

Q. Did he tell you just to rest easy in the matter

(Testimony of Clinton E. Perkins.)

and you would get rid of the land?

A. He told me he was satisfied he could sell it.

Q. And that was before you located?

A. Yes, sir.

Q. Did he bargain with you to give you that \$200.00? A. No, sir.

Q. You are sure? [728—398]

A. Why, I know he didn't.

Q. Do you remember testifying before the grand jury last November? A. Yes, sir.

Q. Do you remember whether or not I asked you this question: "Did he, Steffey, bargain with you as to the \$200.00? Answer. Well, he gave me to understand that I was to get that much."

A. Well, he told me he was satisfied he could sell it and get me \$200.00, but he made no bargain with me to get it.

Q. Who did you understand you were selling it to?

A. I never knew.

Q. Did you feel that you were in duty bound to sell it to Mr. Steffey?

A. Why, in one way I did and in one way I don't know that I did. I depended on Mr. Steffey.

Q. Have you talked this matter over with anybody since you were at the grand jury?

A. Well, I may have when I was to home. I don't know.

Q. Have you talked about it with anybody since you have been here?

A. Not in particular; no, sir.

Q. Well, anybody in general?

(Testimony of Clinton E. Perkins.)

A. Nobody in general.

Q. Have you spoken to anybody about it since you have been here?

A. Well, now, I may have. I don't know. I have talked with the boys that has been waiting here and I don't know. I may have spoke about it.

Q. Do you remember me asking you this question: "Was it your understanding that you were to sell it to whomsoever he, Steffey, picked out for you?" And that you made this reply: "Well, I felt that I was in duty bound to sell it to him." Answer the question yes or no.

Mr. TANNAHILL.—He can make any explanation he wants to.

Mr. GORDON.—After he answers it he can.
[729—399]

A. I don't remember. You say that is the question I answered last winter?

Q. I am reading from the stenographic report, and I am asking you if you remember that question being asked you and that answer made by you?

A. I am not sure.

Q. Is that the truth?

A. Read it again, please.

Thereupon the reporter read the question to him, as follows: "Do you remember me asking you this question: 'Was it your understanding that you were to sell it to whomsoever he, Steffey, picked out for you?' And that you made this reply. 'Well, I felt that I was in duty bound to sell it to him.' Answer the question yes or no."

(Testimony of Clinton E. Perkins.)

A. No, I don't remember.

Q. You say you don't remember. Now, is that a fact, what I read to you, is that the truth of the matter? A. That I depended on Steffey?

Q. That isn't the question. Can't you remember a question long enough to answer it? Did you say, "Well, I felt that I was in duty bound to sell it to him"?

A. Well, yes, I did feel a little in duty bound to sell it to him if he wanted it.

Q. Do you remember the occasion of making your final proof? A. Yes, sir.

Q. Did anyone come from your home to Lewiston with you on that occasion? A. I don't think so.

Q. Who notified you of the time to come?

A. It was advertised in the paper.

Q. Well, I know that, but—

A. I don't think anybody notified me.

Q. Do you read all advertisements in the paper?

A. Well, I read that one. [730—400]

Q. Didn't the land office notify you?

A. I don't remember as they did.

Q. Did Mr. Steffey notify you?

A. I don't think so.

Q. You met Steffey when you got here though, didn't you? A. Yes, sir.

Q. Did you meet him by appointment?

A. I suppose I did. I don't remember.

Q. Did you get the money from him with which to make your proof? A. No, sir.

Q. Didn't you get any from him?

(Testimony of Clinton E. Perkins.)

A. Not to make my proof with, I didn't.

Q. Did you get any money from Steffey that day?

A. Yes, sir.

Q. How much did you get?

A. I don't remember.

Q. Didn't you get \$400.00?

A. Might have, yes, sir.

Q. Don't you know as a fact that you did?

A. Yes, sir.

Q. Where was that given to you?

A. It was given to me at a hotel, but I can't tell you the name of it.

Q. Did he go to the land office with you when you made your proof?

A. I believe he was one of my witnesses. I don't know that he went with me.

Q. Did I ask you if you used the money Steffey gave you to make your proof? A. No, sir.

Q. He gave you the money before you made your proof though, as I understand?

A. Yes, sir. [731—401]

Q. And he gave you \$400.00?

A. I believe it was \$400.00.

Q. Why didn't you make your proof with that money?

A. Because I was— I had been told that it wasn't just right, and I raised the \$400.00 myself.

Q. How did you raise the \$400.00?

A. Well, sir, I sold some timber for one thing, and some cattle for another.

Q. The day you were in Lewiston?

(Testimony of Clinton E. Perkins.)

A. No, sir; before that.

Q. When did you sell your timber?

A. I sold my timber I think probably in May or June.

Q. How long was that before you made your proof? A. Two or three weeks.

Q. To whom did you sell the timber?

A. John Peckham.

Q. How much did you get for it?

A. I got \$250.00.

Q. Cash? A. Yes, sir.

Q. What else did you sell?

A. I sold some cattle.

Q. How much did you get for the cattle.

A. I don't remember, but I got enough so that I had more than \$400.00.

Q. What did Steffey give you that money for?

A. He give it to me to prove up with.

Q. And you had the money with you when you went to the land office. Is that correct?

A. Yes, sir.

Q. And you had Steffey's money in one pocket and your own money in the other?

A. Yes, sir. [732—402]

Q. And you thought it was proper to use the money you had in the other pocket? A. Yes, sir.

Q. Did you give Steffey his money back?

A. No, sir.

Q. Did you give him a note for it?

A. No, sir.

Q. Pay him any interest on it? A. No, sir.

(Testimony of Clinton E. Perkins.)

The SPECIAL EXAMINER.—If you had any money of your own why did you take Mr. Steffey's money?

WITNESS.—Because part of that money I owed and I couldn't afford to have it tied up.

Mr. GORDON.—Q. You didn't intend to use that money of yours to make proof, did you?

A. My own money?

Q. Yes, sir. A. I certainly did.

Q. If Steffey hadn't given you the \$400.00 would you have made proof that day?

A. I don't know whether I would or not.

Q. I understood you to say just now that you needed it for some other purpose and couldn't spare it. A. Yes, sir.

Q. Then, as a matter of fact if you hadn't gotten that \$400.00 from Steffey you would have thrown the thing up, wouldn't you?

A. I don't know. I might have.

Q. Did you collect the money that you had of your own the day you made proof after you got here?

A. No, sir.

Q. Let us see if this will refresh your recollection: "When I went down there he, Steffey, asked me if I had the money to prove up [733—403] on, and I told him I had some money, and he gave me the price, \$400.00 and some dollars, but I didn't use this that he gave me. I could have used this, but I rustled around and got the money of my own."

A. I rustled around before I came to Lewiston.

Q. Do you remember making that answer?

(Testimony of Clinton E. Perkins.)

A. I don't remember making that answer.

Q. Is that answer true or false?

A. I suppose it is true.

Q. Do you remember this question being asked you: "And you got the other money so that you could ease your conscience? Answer. Well, they asked me whose money I was proving up with, and I was proving up with my own money. That was the only difference. By the time it came to proving up there was a lot of yarns going around, and they said, 'you will get into trouble if you borrow the money.' "

A. Yes, sir.

Q. And was that the reason you rustled this other money? A. Yes, sir.

Q. Now, after you made proof on the proving up day did Steffey give you any money?

A. Yes, sir.

Q. How much?

A. I believe he gave me \$100.00.

Q. Did he ever give you any after that?

A. Yes, after that.

Q. Did you give him a deed the day he gave you the \$100.00? A. No, sir.

Q. What did he give you the \$100.00 for?

A. Because I needed the money, I guess.

Q. Because you needed the money. Then you still had \$500.00 and some odd dollars, did you?

A. Yes, sir. [734—404]

Q. You wouldn't have felt honorable in selling that land to anybody else but Steffey, would you?

A. Why, I could have if I wanted to.

(Testimony of Clinton E. Perkins.)

Q. You mean somebody might have bought it from you and you wouldn't have been criminally liable, but that isn't the question. I say you wouldn't have felt honorable in selling to anybody you wanted to?

A. I could have sold it to anybody I wanted to by giving Steffey his money.

Thereupon, by request, the reporter repeated the last question.

WITNESS.—Why, I wouldn't have, no.

Mr. GORDON.—Q. I will ask you whether or not you didn't feel, from your first conversation with Steffey, in consideration of the money he was going to advance to you, that you would sell him that property?

A. Why, I did, because I depended on him.

Q. And you wouldn't have taken it up if you hadn't? A. I wouldn't at that time.

Q. To whom did you sell this property?

A. I believe it was Mr. Kettenbach.

Q. You sold through Mr. Steffey?

A. Yes, sir.

Q. State how that transaction happened. Did Mr. Steffey come out to your place with a deed?

A. No, sir, I believe I went to Mr. Judd's office, justice of the peace or notary public, and made out the deed.

Q. Who was there at that time?

A. Mr. Judd was there.

Q. Well, who else? A. My wife.

Q. Who else?

A. I don't know whether Mr. Steffey was there

(Testimony of Clinton E. Perkins.)

or not. [735—405]

Q. Did you ever meet Mr. Dwyer in this transaction?

A. No, sir, never knew the man at that time.

Q. When did you get the rest of your \$200.00?

A. Well, it was some little time after the deed was made out. I don't remember just how long.

Q. Who gave you that? A. Steffey.

Q. So the whole matter turned out just as you expected it would from the start? A. Yes, sir.

Q. You got what Steffey told you you would get?

A. Yes, sir.

Q. You had no complaint whatever, did you?

A. Not a bit.

Q. You felt that he had carried out his obligation and you had carried out yours? A. Yes, sir.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Clinton E. Perkins, dated April 19, 1906, the nonmineral affidavit, the notice for publication, the testimony of Perkins given on final proof, and the cross-examination thereof, all of which have been identified by the witness; the testimony of the witnesses on final proof, and the cross-examination of them; the receiver's receipt and the register's certificate, dated July 12, 1906; certified copy of patent issued to Clinton E. Perkins, September 11, 1907, all relating to the entry of lots 3 and 4, of section 3, township 36 north of range 5 east, and the south half of the southwest quarter of section 34, in township No. 37, north of range 5 east of Boise

(Testimony of Clinton E. Perkins.)

meridian. We also offer certified copy of deed dated September 4, 1906, made by Clinton E. Perkins and Rhoda A. Perkins, his wife, to George H. Kester, consideration \$1250.00, conveying lots 3 and 4, of section 3, township 36 north of range 5 east, and the south half of the southwest quarter of [736—406] section 34, in township 37 north of range 5 east of Boise meridian, containing 165.12 acres, signed and executed by Clinton E. Perkins and Rhoda A. Perkins, his wife, before Fred A. Judd, Justice of the Peace of Nez Perce County, September 4, 1906, and recorded in the office of the recorder of Nez Perce County, at the request of the Lewiston National Bank September 10, 1906.

Said above mentioned documents were thereupon marked by the stenographer as Exhibits 20, 20A, 20B, 20C, 20D, 20E, 20F, 20G, 20H, 20I, 20J, 20K, 20L, 20M, 20N, and 20O.

Mr. GORDON.—Q. I asked you whether or not you ever gave that \$400.00 back to Mr. Steffey?

A. No, sir.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but severally object to the introduction of any of the papers in evidence in so far as they relate to bills No. 406 and 388, upon the ground that they are irrelevant and immaterial, the entry not being involved in either of these actions. And the defendants severally object to the introduction of the final proof papers in evidence in so far as they relate to either of the ac-

(Testimony of Clinton E. Perkins.)

tions, referred to as the testimony of claimant Clinton E. Perkins, the cross-examination of the claimant Clinton E. Perkins, the testimony of the witness for claimant Harvey J. Steffey, and the cross-examination of the witness for claimant Harvey J. Steffey, the testimony of the witness William Dwyer and the cross-examination of the witness William Dwyer, the proof of publication, upon the ground that they are matters relating to the final proof, occurring long after the filing of the sworn statement, and are irrelevant and immaterial.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Perkins, as I understand you, your first conversation with Mr. Steffey was that you asked him if he could locate you on a timber claim? [737—407]

A. Yes, sir.

Q. You told him you wanted to take up a timber claim? A. Yes, sir.

Q. Then, later he told you he could locate you on a timber claim? A. Yes, sir.

Q. Then, was there some conversation about the value of it? What it was worth? He told you it wasn't worth—

A. He said it wasn't a good claim.

Q. And he told you that he thought he could sell it for you so that it would bring you at least \$200.00 over and above expenses? A. Yes, sir.

Q. And did he tell you in that same conversation that he could make no contract with you to purchase

(Testimony of Clinton E. Perkins.)

it or to sell it? A. Yes, sir, he did.

Q. And it was your understanding that you was making no contract with him regarding the sale of your land?

A. That was what I understood.

Q. Before you made your final proof?

A. Yes, sir.

Q. And as a matter of fact you made no contract for the sale of your land— A. None whatever.

Q. —until after you made final proof?

A. No, sir.

Q. Then, the affidavit which you made at the time you filed your sworn statement, "That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit [738—408] of any person except myself," that affidavit was true, was it? A. Yes, sir.

Q. True at the time you made it, and at the time you made final proof, and is still true?

A. Yes, sir.

Q. And you paid for the land with your own money? A. I did.

Q. And your transaction in regard to it was per-

(Testimony of Clinton E. Perkins.)

fectly proper in so far as you know? A. Yes, sir.

Q. Do you remember how long it was after you made your final proof that you made a deed to the land?

A. I don't remember just how long. It was, I believe, the same fall. I proved up in the summer and I think it was the same fall.

Q. About the 4th of September, 1906?

A. I suppose.

Q. Does that deed refresh your memory (handing witness deed)? Your signature is on the other side of it, at the bottom. A. Yes, sir.

Q. And that is when you sold your land?

A. Yes, sir.

Q. Do you remember the circumstance of your signing an affidavit in relation to the land? Just look over that paper (handing witness paper). Do you remember the circumstance of your signing that?

A. Yes, sir.

Q. What were the circumstances under which you signed it? A. Oh! Do I remember?

Q. The circumstances of your signing or making that affidavit?

A. No, I don't just remember when I did it either.

Q. Who brought the affidavit to you?

A. I believe Colonel Todd, but I don't know; I couldn't say for sure. [739—409]

Q. Do you know whether Steffey was there or not?

A. No, sir, I don't.

Q. Do you remember whether Steffey was there or

(Testimony of Clinton E. Perkins.)

not? A. No, I don't remember.

Q. That affidavit is true, is it? A. Yes, sir.

Q. That is your signature to it, is it?

A. Yes, sir.

Mr. TANNAHILL.—We ask that it be marked Defendants' Exhibit "D," for identification.

Said document was thereupon marked by the stenographer as Defendants' Ex. "D," for identification.

Mr. TANNAHILL.—Q. Mr. Perkins, you say that the arrangement you had with Mr. Steffey turned out as you expected it would. You mean that Mr. Steffey told you that he thought he could sell the land for enough so that you could clear at least \$200.00?

A. Yes, sir.

Q. And that after you acquired title you could sell it in that way? A. Yes, sir.

Q. That was the arrangement you had reference to? A. Yes, sir.

Q. And there wasn't any arrangement that you might have had with Mr. Steffey to buy your land before you made final proof? A. None whatever.

Q. And you stated that you felt under some obligation to sell it to Mr. Steffey as well as anyone else, all things being equal. You mean by that you felt under obligation to give Mr. Steffey the preference right? A. Yes, sir.

Q. You did not feel under any obligation by reason of any contract you had made with Mr. Steffey before you purchased it, did you? [740—410]

A. No, sir.

(Testimony of Clinton E. Perkins.)

Q. And you understood that you had no contract with him for the purchase of it?

A. I had no contract with him.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Perkins, there was no further conversation between you and Mr. Steffey about what you were to do with this land, between the first time that you talked with him about it and the time you signed this deed, was there?

A. Was there any talk about it?

Q. Yes. About the sale of it, I say.

A. Why, a little; I guess there was.

Q. Do you remember when it was?

A. No, I don't.

Q. Do you remember what transpired when you signed this deed? Was the deed just brought to you and you signed it?

A. No, sir, we went to Mr. Judd's.

Q. Was anything said about price at that time, or did he just give you \$100.00?

A. He didn't give me the \$100.00 then.

Q. Was anything said about price then?

A. I don't remember.

Q. Would you have remembered if there hadn't been anything said? A. I don't know.

Q. What was said when this affidavit was brought to you by Mr. Judd?

A. Did Mr. Judd bring the affidavit?

Q. I understood you to say he did, sir. I am

(Testimony of Clinton E. Perkins.)

speaking now of the paper marked Exhibit "D."

A. I think Mr. Todd— [741—411]

Q. Todd—excuse me.

A. I don't remember what was said.

Q. Was the paper prepared when he brought it?

A. I don't know.

Q. You haven't any recollection of it at all, have you?

A. I have a recollection of signing it, but as to whether he made it out there or not—

Q. Did you read it over?

A. Yes, sir, I suppose I did.

Q. Was it in your house?

A. I believe it was.

Q. Was it in your house or were you and your wife down at somebody else's house?

A. I ain't sure, but I think it was at my house.

Q. You haven't a typewriter there, have you?

A. No, sir.

Q. Then, it must have been drawn up before he brought it. A. I don't know.

Q. He didn't bring a typewriter with him, did he?

A. I don't—

Q. Who did bring a typewriter? Did he bring a typewriter?

A. I don't know. It may have been Mr. Smith, this man here—I don't mean right here now, but—

Q. You mean one of the special agents of the Government? A. Yes, sir.

Q. Now, how long after you made and delivered this deed did you make this affidavit?

(Testimony of Clinton E. Perkins.)

A. I don't know.

Q. Have you any recollection?

A. No, sir, I don't know just how long it was.

Q. Well, was it a week or a month or six months, or how long?

A. It might have been a month; I don't know.

Q. I notice that the deed is dated September 4, 1906, and the [742—412] affidavit is dated February 28, 1907.

A. Well, it might have been that long; I don't know.

Q. Was anything said why they wanted this affidavit? A. I don't think so.

Q. Did Mr. Todd tell you who had sent it to him?

A. No, sir, or if he did I don't remember.

Recross-examination.

(By Mr. TANNAHILL.)

Q. You spoke about Mr. Smith being at your place with a typewriter. Was it Special Agent Smith, in the employ of the Department?

A. I think so. I am not sure whether he is the man or not.

Q. I will ask you if Mr. Steffey came to your house about the time Mr. Smith came afterwards and asked you to repudiate your affidavit and testify that you had a prior agreement?

A. Why, he came there after that and asked me a few questions on that line.

Q. What did he ask you? What did he tell you?

A. He asked me if I would come down to Lewiston

(Testimony of Clinton E. Perkins.)

and go on the stand.

Q. And what else did he ask you?

A. He asked me to see Mr. Jolly, as he hadn't time. And I rode back down the road with him and he told me then why he wanted this done.

Q. What did he tell you was the reason?

A. Well, he said they had given him dirt and he was going to get even with them.

Q. Who did you understand he meant by they?

A. Kester and Kettenbach, he gave me to understand.

Q. Kester, Kettenbach and Dwyer?

A. Yes, sir.

Q. Was there anything else he said to you?

A. Well, he said that that claim would look pretty good to get it back. [743—413]

Q. Look pretty good for you to get it back?

A. Yes.

Q. Do you think of anything else he said?

A. Nothing in particular.

Redirect Examination.

(By Mr. GORDON.)

Q. Did you talk with Mr. Steffey about the way this claim was taken up?

A. No, not how the claim was taken up.

Q. Did Mr. Steffey tell you that he wanted you to tell how the transaction happened?

A. Yes, sir.

Q. Did he tell you he wanted you to tell the truth about it?

(Testimony of Clinton E. Perkins.)

A. He didn't say anything about me telling the truth.

Q. Did he want you not to tell the truth about it?

A. Well, he didn't come right out and say he didn't.

Q. Did he do anything to indicate to you that he wanted you to tell anything but the truth?

A. He didn't say one way or the other.

Q. Have you ever told anybody about this before?

A. Why, I may have. I have talked it over a good many times among my friends.

Q. Did you ever tell Mr. Tannahill?

A. I don't think I told Mr. Tannahill.

Q. Have you ever talked to Mr. Tannahill before about this case? A. Why, I may have, a little.

Q. When? A. Last winter.

Q. Where?

A. Down at Boise. I haven't talked with him in Lewiston about it.

Q. Did you tell him that then? [744—414]

A. I don't think I did.

Q. Did you talk to Mr. Dwyer?

A. I have, yes, sir.

Q. When? A. Last winter, and perhaps since.

Q. When was the last time you talked to Mr. Dwyer? A. About the case?

Q. Yes. A. Well, I don't know when.

Q. Did you talk to him yesterday?

A. I don't think I did yesterday.

Q. Did you talk to him about anything yesterday?

A. Oh, yes, I talked to him yesterday.

(Testimony of Clinton E. Perkins.)

Q. Did you see Mr. Dwyer when you were summoned before the grand jury last winter at Moscow?

A. Yes, sir.

Q. You talked with him? A. Yes, sir.

Q. Did he tell you that he had this affidavit that has been shown you this morning? A. No, sir.

Q. What did he tell you?

A. I don't know now what he told me. I don't know that we talked the case over at all.

Q. Nothing said about the case?

A. Not to speak of, that I know of. If there was, I have forgotten it.

Q. And you told Mr. Tannahill the same story you have told here this morning when you had your talk with him?

A. Not very much of it, if any, for he has never asked me but very little about it.

Q. Did you tell him about Steffey coming out to your house with Mr. Smith? [745—415]

A. I don't think I did.

Q. Did you tell anybody that?

A. Why, I suppose I have.

Q. Who did you tell it to?

A. I don't know. I have talked it over with a good many of the people that have been waiting around, waiting just as I have been; we have talked these things over more or less, but who I don't know.

Recross-examination.

(By Mr. TANNAHILL.)

Q. You was called to Boise last winter as a witness in the trial of the defendants by the defendants,

(Testimony of Clinton E. Perkins.)

were you not? A. Yes, sir.

Q. That is how you came to be in Boise?

A. Yes, sir.

Q. And the conversation you had with me in Boise was when you was a witness for the defendants, whom I was representing? A. Yes, sir.

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all.

At this time an adjournment was taken until ten o'clock A. M., Monday, August 29, 1910. [746—416]

On Monday, the 29th day of August, 1910, at ten o'clock A. M., the hearing was resumed.

[Testimony of Mrs. Frances A. Clausen, for Complainant.]

Mrs. FRANCES A. CLAUSEN, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Will you state your name, please?

A. Frances A. Clausen.

The SPECIAL EXAMINER.—Q. Frances A. Clausen? A. Yes, sir.

Q. How do you spell your name?

A. C-l-a-u-s-e-n.

Mr. GORDON.—You are a married woman, are you? A. Yes, sir.

Q. How long have you been married, Mrs. Clausen, to your present husband?

A. A year ago the first of February last. A year ago last February.

(Testimony of Mrs. Frances A. Clausen.)

Q. What was your name prior to this marriage?

A. Frances A. Justice.

Q. And how long had you been married to Mr. Justice?

A. Well, I will have to think.

Q. Oh, just approximately? A. 32 years.

Q. And what was your husband's name?

A. David Justice.

Q. And how long has he been dead?

A. Five years last February. [747—417]

Q. And you are the mother of Mrs. Guy L. Wilson?

A. Yes, sir.

Q. And what is her Christian name?

A. Ella.

Q. What was your maiden name, Mrs. Clausen?

A. Frances A. Crocker.

Q. How do you spell that? A. C-r-o-c-k-e-r.

Q. Where do you reside at present?

A. Clarkston.

Q. How long have you resided at Clarkston?

A. Twelve years,

Q. And prior to coming to Clarkston where did you reside?

A. Greenwood, Wisconsin.

Q. Are you the mother of Fred. Justice?

A. Yes, sir.

Q. And is he living or dead? A. He is dead.

Q. How long has he been dead?

A. Five years last April.

Q. Do you know the defendant, William Dwyer?

A. Yes, sir.

Q. How long have you known him?

A. Since I moved to Clarkston,—about twelve years.

(Testimony of Mrs. Frances A. Clausen.)

Q. Are you intimately acquainted with his wife, Mrs. Kittie Dwyer? A. Yes, sir.

Q. And you have known her the same length of time? A. Yes, sir.

Q. Were you next door neighbors?

A. No, sir.

Q. Is your acquaintance rather an intimate acquaintance? [748—418]

A. Why, just a neighborly acquaintance.

Q. You remember taking up a claim under the timber and stone act, do you?

A. Yes, sir—and I guess I will never have a chance to forget it, either.

Q. I show you timber and stone lands sworn statement of Frances A. Justice, dated April 25th, 1904, and ask you whether you signed that paper and filed the same in the land office at or about the date it bears? A. Well, that is my signature, all right.

Q. I show you the notice of publication of the same date, and ask you whether or not you filed that paper at the same time—April 25th, 1904?

A. Well, there is no signature on that.

Q. No; but I ask you if you remember having filed the paper? A. Yes, sir, I filed one.

Q. And I show you the testimony of Frances A. Justice given at final proof, dated July 13th, 1904, and ask you if you signed that paper?

A. I signed that.

Q. And the cross-examination of Frances A. Justice at the same time; is that your signature to that?

A. Yes, sir.

(Testimony of Mrs. Frances A. Clausen.)

Q. Now, with whom did you talk before taking up a claim about the propriety of taking up one?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness in regard to taking up a timber claim, in so far as the evidence relates to bills No. 388 and 407, upon the ground that the entry is not involved in those two particular actions, and the evidence is irrelevant, incompetent and immaterial.

The Reporter thereupon repeated the last question.

Mr. GORDON.—Answer the question, Mrs. Clausen. [749—419]

A. Why, I asked Mr. Dwyer to get me a claim; several times I talked to him about a claim, and asked him to get me one.

Q. That is William Dwyer? A. Yes, sir.

Q. Now, what else did you say to him at that time?

A. Well, I can't remember everything I said. I talked to him several times and asked him to get me a claim, and we was going down in California, and they had trouble there about claims, so we didn't go there to get a claim; and then I asked him to get me one in Oregon, and we didn't get one; then I asked him to get me one in Idaho, and he located me on a claim in Idaho.

Q. Yes; but now what was your arrangement with Mr. Dwyer before he located you?

A. No arrangement, only that he would locate me on a claim.

Q. And who was to pay the expenses?

(Testimony of Mrs. Frances A. Clausen.)

A. Well, I was to pay the expenses. I borrowed the money to pay them.

Q. Well, I am speaking about your arrangement with Mr. Dwyer. Now, who was to pay your expenses?

A. Well, I was to pay the expenses after I borrowed money to pay them.

Q. Now, explain how that was.

A. Well, I asked him to borrow the money for me to get a claim. First I tried to get money in Wisconsin to get a claim, and then I tried to get money of Mr. Crocker, a relative of Mr. Justice, and they only had money enough to get their own claims, and I had my place mortgaged, so that I couldn't very well borrow money myself, and I asked Mr. Dwyer as a favor if he would borrow money for me to get a claim, and he said he didn't know whether he could get it or not; he would try it.

Q. Now, what were you to get then for your claim?

A. Well, I didn't know what we would get out of it. We figured on [750—420] it, and he didn't know whether he could sell the claim or not right away; he didn't know just what he would get out of it.

Q. Didn't he tell you before you went up there that he would give you \$150.00 for your right?

A. No, sir.

Q. Mrs. Justice, you remember testifying—

A. I remember Mr. O'Fallon coming to the house, and I tried to tell him how it was, and he says, "Mrs.

(Testimony of Mrs. Frances A. Clausen.)

Justice, you are evading the truth," every time I would try to tell him how it was.

Q. Now, one moment. You made an affidavit for Mr. O'Fallon, didn't you?

A. Well, he scared me pretty near to death. I was pretty near crazy at the time—I was sick—and he said, "We know just how that was, and you will have to tell me just as it was," and I tried to tell him how it was, and he wouldn't allow me to tell it that way.

Q. You signed the affidavit and swore to it, didn't you?

A. I signed the paper there, but I was just about wild. I don't know what I did sign.

Q. And he wrote the paper while he was there, did he not?

A. Well, he didn't write it; there was another fellow there. They came and looked all through my house to see that I was alone, and then every time I tried to tell how it was he would say, "Now, you are evading the truth, Mrs. Justice. Now, we don't want to get you in trouble, but we know just how this is," and he would tell how it was. He says, "We have found out how this is," and he says, "We are sent here by the Government, and you must tell it the way it is."

Q. And you signed the affidavit?

A. Well, I signed the affidavit, for what could I do? I was scared half to death there by those two men.

Q. And you testified at the trial of Mr. Dwyer a

(Testimony of Mrs. Frances A. Clausen.)

year or more after that, in October or November, 1906, did you not? A. I testified in Moscow. [751—421]

Q. At the trial of Mr. Dwyer? A. Yes, sir.

Q. And you told the truth then, though, didn't you?

A. I was kept in the sweat-box for two days. I didn't know what I was telling. I don't remember what I did tell there.

Q. What do you call a "sweat-box"?

A. Well, Mr. Ruick took me into a room, and he said, "Now, I am going to have the truth of this matter."

Q. That's all he wanted, wasn't it?

A. Well, he had it his way, and he wouldn't let me tell it my way.

Q. Did you tell anything but the truth on the witness-stand up there?

A. I don't remember what I told on the witness-stand.

Q. Did you tell the truth?

A. I told things as they wanted I should tell them then—as the way they said it was to be.

The SPECIAL EXAMINER.—Mr. Gordon asks you if you told the truth. You can answer that direct.

Mr. GORDON.—Q. Did you tell the truth then?

A. I didn't tell the truth if it was saying that there was a prior agreement.

Q. Now, I am not asking you that. What has put the notion of a prior agreement into your head?

(Testimony of Mrs. Frances A. Clausen.)

A. There is nothing; but I have told them all the time that there was no prior agreement.

Q. Now, I haven't asked you if there was one, Mrs. Clausen.

A. Yes; you asked me if there was one.

Q. No—I asked you what the arrangement was.

A. Well,—

Q. Then, you testified several days later, or at the following [752—422] spring—the 1907—the case of Kester, Kettenbach and Dwyer, did you not, at Moscow? A. I don't know if it was in the spring.

Q. Do you remember testifying at their trial?

A. Yes, sir; I remember of testifying.

Q. And didn't you tell the truth then?

A. Well, I was sick, and worried most to death. I don't know what I told at that time. I can tell you just how it was, if you will give me a chance to tell it.

Q. Well, now, when I get through—after I ask you these questions you may make any explanation that you desire. Now, Mrs. Clausen, after Mr. O'Fallon and Mr. Goodwin had gotten that affidavit from you, and just prior to the first trials at Moscow that I have adverted to, you took a little vacation, didn't you?

A. Of the trials, you say?

Q. The first trials that were had at Moscow, of Dwyer and Kester and Kettenbach?

A. Yes, sir; I went to Canada. I wasn't—

Q. Now, one moment—

The SPECIAL EXAMINER.—Just answer the questions, Mrs. Clausen. When Mr. Gordon asks you a question that can be answered by yes or no

(Testimony of Mrs. Frances A. Clausen.)

answer it, and don't go on to anything else until he asks you.

Mr. GORDON.—Q. And when you got ready to go on a vacation, your daughter (Mrs. Wilson) went to the station with you, didn't she?

A. No, she didn't.

Q. Where did you tell her that you were going to?

A. I didn't tell her where I was going to.

Q. Where did you start for?

A. I started for Spokane.

Q. And what was your purpose in going to Spokane? A. Well, just to take a trip. [753—423]

Q. Where were you going?

A. I intended to go to Seattle, or go there from Spokane after I got there.

Q. Now, didn't you intend to go to a conference or congress down to Coeur d'Alene?

A. I had intended a while before to go there, yes.

Q. And that congress was in session about that time, wasn't it? A. Yes, sir.

Q. And a friend of yours (a Mrs. Robinson) was going to receive a degree there, wasn't she?

A. I don't know any Mrs. Robinson.

Q. Well, who was the friend of yours who was going to receive a degree? A. Mrs. Morrison.

Q. And what degree was she to receive?

A. The Degree of Honor.

Q. And you were desirous of seeing that degree passed upon her; is that correct? A. Yes, sir.

Q. But you didn't go down to Coeur d'Alene—you went to Spokane? A. Yes, sir, I went to Spokane.

(Testimony of Mrs. Frances A. Clausen.)

Q. And how long did you remain in Spokane?

A. Till the first train went to Seattle.

Q. And then, you bought a ticket from here to Spokane, and then a ticket from Spokane to Seattle; is that correct? A. Yes, sir.

Q. And did you stop at a hotel in Spokane?

A. No, sir.

Q. Did you stop at a hotel in Seattle?

A. I did. [754—424]

Q. What hotel? A. The Tourist Hotel.

Q. Did you register at that hotel? A. I did.

Q. Under what name? A. Mrs. Frances.

Q. Mrs. Frances? A. Yes, sir.

Q. Did you have any reason for not registering as Mrs. Frances Justice?

A. No, sir, I had no reason that I know of. I could sign my name "Mrs. Frances" if I wanted to, and leave the "Justice" off.

Q. And you availed yourself of that privilege?

A. Yes, sir.

Q. And how long did you remain at Seattle?

A. I stayed overnight.

Q. And from Seattle did you buy another ticket and go somewhere?

A. Yes, sir; I went to Vancouver.

Q. And did you go to a hotel at Vancouver?

A. I did.

Q. What was the name of that hotel?

A. The Empire.

Q. And did you register there? A. I did.

Q. Under what name? A. Ada Crocker.

(Testimony of Mrs. Frances A. Clausen.)

Q. Ada Crocker?

A. Yes, sir. That is my name.

Q. And how long did you remain there?

A. I don't remember now how long I was there.

Q. Did you go anywhere else before you returned to your home at Clarkston? [755—425]

A. Yes, sir; I went several places.

Q. Well, state the itinerary, please.

A. Well, I went to Mount Pleasant; I went to North Vancouver, to New Westminster, and to Victoria. When I went to Victoria I had started to come home, and I didn't have any money only enough to pay my fare back to Vancouver, and I went back to Vancouver.

Q. And did you borrow any money from anybody to get back here?

A. No, sir; I didn't borrow money to get back here.

Q. Did you borrow any money while you were there?

A. Yes, sir; I borrowed money of Mr. Dick.

Q. Who was Mr. Dick?

A. Well, he is a gentleman that lives in North Vancouver.

Q. Had you ever met him before? A. No, sir.

Q. And did you come back alone, or did you come back with someone?

A. Oh, the Government sent a friend to come back with me.

Q. And what was that friend's name?

A. Mr. Glover.

Q. And do you know what his official capacity

(Testimony of Mrs. Frances A. Clausen.)

was? A. He was a detective.

Q. And that was how long before the first trial that you attended at Moscow, that you returned to your home; or were you brought right back to Moscow?

A. I was brought to Moscow.

Q. The trial was on at that time? A. Yes, sir.

Q. Now, did you tell anyone that you took that trip to avoid the unpleasantness of having to appear at the trial? A. No, sir, I never did.

Q. You never told anybody that?

A. No, sir. [756—426]

Q. Well, is that a fact?

A. That I went to avoid the trial?

Q. Well, you can put it that way if you want to; but I mean to avoid the unpleasantness of having to appear in court?

A. Well, I didn't want to appear.

Q. And you were not under subpoena?

A. No, sir, I wasn't under subpoena.

Q. And you just thought it would be all right for you to take your vacation and not have to be bothered with any trial, or the embarrassments and inconveniences that you might be submitted to at the trial; is that correct?

A. Well, Mr. O'Fallon told me if I would sign that paper that he would try and influence them not to have me as a witness on the stand, and I supposed he would do that.

Q. You didn't want to testify, did you?

A. No, sir, I didn't. It isn't very pleasant.

Q. Now, you went to view this claim, did you not?

(Testimony of Mrs. Frances A. Clausen.)

A. I did.

Q. And you went with Mr. Dwyer?

A. Yes, sir.

Q. And with whom else did you go?

A. Mr. Justice.

Q. That is your husband?

A. Yes, sir; and Mr. O'Brian.

Q. And was Mr. and Mrs. Guy Wilson along?

A. No, sir; Mrs. Guy Wilson wasn't here at the time.

Q. Guy Wilson was along? A. Yes, sir.

Q. And was your son Fred. along? A. No, sir.

Q. Have you named all the parties that you can remember that went on that excursion? [757—427]

A. That's all I think of now.

Q. And what city or town did you go to after leaving Lewiston, on the way to the claim?

A. I went to Orofino and Pierce City.

Q. Now, who paid your expenses from here to Pierce City?

A. Mr. Dwyer paid them, because I didn't have the money to pay them. I got him to furnish me the money.

Q. Yes; and he paid your expenses up to the claim and back; is that correct?

A. Yes, sir; but I paid him back.

Q. Well, that's all right.

Mr. TANNAHILL.—She has the right to answer the question fully and she has a right to make any explanation she desires to.

Mr. GORDON.—I agree with you thoroughly.

(Testimony of Mrs. Frances A. Clausen.)

WITNESS.—I told you first I had no money, and I got him to furnish me money.

Mr. GORDON.—I agree with you thoroughly, Mr. Tannahill, and I haven't raised the least objection to her answering, nor I won't.

Q. Now, what was said about the money by Mr. Dwyer? You told him you didn't have the money with which to pay for a claim; is that correct?

A. Yes, sir.

Q. And you asked Mr. Dwyer if he could get it for you? A. Yes, sir.

Q. And he said that he thought that he could?

A. Yes, sir.

Q. Now, was this arrangement to get all of the money that was necessary for filing fees, and expenses to the claim, and for final proof also?

A. Yes, sir.

Q. And this was before you had ever gone to the timber claim that you had had this talk with Mr. Dwyer? [758—428] A. Yes, sir.

Q. Now, what did you think you were going to get for this timber claim?

A. I didn't know how much I would get. He figured the way the claims was selling that it would be somewhere about \$200.00 more than the expenses.

Q. And did Mr. Dwyer tell you that before you went to the claim? A. Yes, sir.

Q. That is when you had your first talk with him?

A. I told him that I couldn't—

Q. No—just answer whether that was the first talk that you had with him? A. Yes, sir.

(Testimony of Mrs. Frances A. Clausen.)

Q. Now, you can go on and answer the rest that you want to say.

A. I told him that I couldn't borrow money to put into a timber claim to hold the claim very long, and I asked him about how much that a body could get out of a claim, and he figured on the claim and he thought somewhere about \$200.00 would be what a claim would bring above expenses.

Q. Now, do you remember whether or not you had an arrangement with Mr. Dwyer by which you were to take up this claim, and that he was to furnish all the expense money and the money for final proof, and that you were to get \$150.00 out of it, after all expenses had been taken out?

A. No, sir; he thought there would be about \$200.00 when I could sell the claim, the way we figured that it would bring about that, the way that other claims was selling.

Q. Now, see if this refreshes your recollection, Mrs. Justice. I am reading from record No. 1605 that has been referred to here in the stipulation the first day that we held a hearing in this case, the case of Kester and Kettenbach and Dwyer vs. the United States, at page 383, and from the context of the preceding pages the question refers, it [759—429] seems, to an understanding that you had with Mr. Dwyer before you went to the timber. Now, I will ask you if you remember this question being asked you, and whether you made the answer that I shall also read: "Question. Now, state what that understanding was?" "Answer. That he would get the

(Testimony of Mrs. Frances A. Clausen.)

money (meaning Dwyer) for me for a claim, and I would go up there and take a claim. It was a verbal agreement. I thought I would get \$150.00 clear of all my expenses." Now, do you remember that question being asked you, and that answer being made by you?

A. It might have been. I don't remember.

Q. Well, was that the truth, as you remember it now? A. Well, about \$150.00 or \$200.00.

Q. Well, is the rest of it correct as you understand it now?

A. I don't know how I can tell you different, how I understood about it, that it would be somewhere about \$150.00 or \$200.00 above expenses.

Q. Now, do you remember whether this question was asked you, and whether you made the answer which I shall also read: "Question. What were you to do with that claim to get \$150.00?" "Answer. I was to file on the claim and prove up on it." "Question. And then what were you to do after you proved up, if anything, in order to get the \$150.00?" "Answer. I gave a contract of a deed for the timber." "Question. I am asking you with regard to the understanding between you and Mr. Dwyer before you went up there. What were you to do with the land when you got title to it?" "Answer. I would sell it. I would get \$150.00 for my chance on the claim." "Question. For what chance? Who did you get the \$150.00 from?" "Answer. Well, he paid me the \$150.00, and I don't know—the claim was made over to the bank, if I remember right, to pay for the note

(Testimony of Mrs. Frances A. Clausen.)

which I had in the bank.” Now, do you remember those questions being asked you and those answers being given by you?

Mr. TANNAHILL.—We object to the question, upon the ground that the witness’ evidence is not materially different as a whole from the [760—430] evidence she is giving at the present time.

The SPECIAL EXAMINER.—Now, Mrs. Clausen, you may answer the question. Just repeat it.

Mr. GORDON.—Q. Do you remember whether or not those questions were asked you and those answers given by you?

A. I don’t remember how the questions were asked, or I don’t remember the answers I gave—all. It has been so long ago I have forgotten. I was sick at that time, and worried, and I can’t remember all that I said.

Q. And you are not very well now, are you, Mrs. Justice?

A. No, sir, I am not. I haven’t been—

Q. Well, now, isn’t that a fact?

A. I want to tell you what made me sick, too.

Mr. GORDON.—Well, now, I don’t think that is relevant.

The SPECIAL EXAMINER.—I don’t think that is relevant to the case, Mrs. Clausen.

WITNESS.—Well, I think it was.

Mr. GORDON—Q. I will, ask you if the facts are as they are purported to report you as having testified at the former trial?

A. I don’t understand that.

(Testimony of Mrs. Frances A. Clausen.)

Q. Maybe I can make myself plainer. You heard me read the questions, did you not? A. Yes, sir.

Q. And you heard the answers? A. Yes.

Q. Well, now, are the answers that were read, purporting to report your testimony as the facts of the case, are they true in that regard?

A. Well, I can't remember what answers—I don't know— [761—431]

Q. Well, now, I will show you the record and ask you to read from the question at the top of page 383: "Now, state what that understanding was," down to the bottom of the page, where the answer is—

WITNESS.—I can't see. I must have some water.

(Note by the Reporter: The witness fell forward from the witness-stand, apparently in a fainting condition, and was assisted by her husband and a lady friend.)

An informal recess was thereupon taken.

At 11:05 o'clock A. M. the hearing was resumed.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Frances A. Justice, dated April 25th, 1904, the notice of publication, the testimony of Frances A. Justice given on final proof, and the cross-examination thereof, all of which have been identified by the witness, and the testimony of the witnesses on final proof, and the cross-examination of them, the Receiver's Receipt and the Register's Certificate, dated July 13th, 1904, a certified copy of the patent issued to Frances A. Justice, dated December 31st, 1904, all concerning

(Testimony of Mrs. Frances A. Clausen.)

the entry of lots 3 and 4, and the east half of the southwest quarter of section 19, township 38 north, of range 6 east of Boise meridian.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to the admission of any papers in evidence in so far as they relate to bills No. 388 and 407, upon the ground and for the reason that the entry is not involved in either of those actions, and they are irrelevant and immaterial. And the defendants severally object to the introduction of the final proof papers in evidence in support of any of the actions, and especially the testimony of claimant and the cross-examination of claimant, Frances A. Justice, the testimony of the witness William Dwyer, and the cross-examination of the witness William Dwyer, the testimony of the witness Edwin Bliss, and the cross-examination of the witness Edwin Bliss, and the [762—432] proof of publication; upon the ground that it relates to the final proof, and they are irrelevant, incompetent and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 21, 21A, 21B, 21C, 21D, 21E, 21F, 21G, 21H, 21I, 21J, and 21K.

The witness Mrs. Frances A. Clausen was thereupon excused from testifying further at this time.
[763—433]

[Testimony of Geary Van Artsdalen, for
Complainant.]

GEARY VAN ARTSDALEN, a witness called on
behalf of the complainant, being first duly sworn,
testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Geary Van Artsdalen?

A. Yes, sir.

Q. How old are you, Mr. Van Artsdalen?

A. Thirty-three.

Q. You are a married man? A. Yes, sir.

Q. How long have you been married?

A. Four years.

Q. Did I ask you where you resided?

A. No, sir.

Q. Where do you reside? A. Lewiston.

Q. How long have you resided in Lewiston?

A. A little over a year.

Q. Where did you reside at the time you took up a
timber claim? A. Weippe, Idaho.

Q. What was your employment then?

A. I was a teamster and farmer.

Q. With whom were you employed?

A. I was working for myself, freighting.

Q. You have a team of your own?

A. I did have at that time, yes.

Q. What kind of employment was this?

A. Well, it was freighting for the merchants at
Pierce, Idaho.

Q. You remember taking up a claim under the tim-

(Testimony of Geary Van Artsdalen.)

ber and stone act in 1903, do you? A. Yes, sir.

Q. Have you ever testified in court concerning the circumstances [764—434] or conditions of your taking up a claim, Mr. Van Artsdalen?

A. No, sir.

Q. Have you ever made a statement for anybody concerning this claim? A. No, sir, I haven't.

Q. Have you ever been asked to? A. No, sir.

Q. I show you timber and stone land sworn statement, dated October 31, 1903, signed Geary Van Artsdalen. A. Yes, sir.

Q. And ask you if you signed that paper and filed it in the land office on or about the date it bears?

A. Yes, sir, that is my handwriting.

Q. And you filed it in the land office about the date it bears? A. Yes, sir.

Q. I show you the nonmineral affidavit, of the same date, and ask you if that is your signature to that paper? A. Yes, sir.

Q. And the notice for publication, you filed that at the same time? A. Yes, sir.

Q. I show you the testimony of Geary Van Artsdalen, taken at final proof, January 11, 1904, and ask you if you signed that paper? A. Yes, sir.

Q. And the cross-examination taken at the same time. Is that your signature to that?

A. Yes, sir.

Q. Mr. Van Artsdalen, who first spoke with you about taking up a timber claim?

Mr. TANNAHILL.—The defendants severally object to the evidence of the witness in relation to

(Testimony of Geary Van Artsdalen.)

or in support of bills No. 407 and 388, upon the ground that the entry of the witness is not involved in these two particular actions, and the evidence is irrelevant and immaterial. [765—435]

The SPECIAL EXAMINER.—You may answer the question now.

The stenographer thereupon repeated the last question.

A. Mr. Jansen.

Q. What was his business?

A. He was locating timber.

Q. Are you acquainted with Mr. William Dwyer?

A. Yes, sir.

Q. Were you at that time? A. No, sir.

Q. Had you ever met him at that time?

A. No, sir.

Q. Do you know Mr. George H. Kester?

A. No, sir.

Q. Do you know Mr. William F. Kettenbach?

A. I know him by sight of late years,—not at that time.

Q. State what occurred between you and Mr. Jansen with reference to taking up a claim.

A. Nothing, only I wanted to take up a claim, and he knew where there was one.

Q. He knew where one was?

A. He did, yes, sir. He was locating timber at that time.

Q. Did he tell you how much it would cost?

A. I don't know as he did. I was a resident of that country and I knew all the time what it cost to

(Testimony of Geary Van Artsdalen.)

prove up on a claim.

Q. I mean for the location fee. A. Yes.

Q. How much was it? A. \$100.00, I think.

Q. Did you pay him \$100.00? A. Yes, sir.

Q. When?

A. When he located me. [766—436]

Q. Before you filed? A. Yes, sir.

Q. Did you know of any purchaser for timber claims at that time? A. No, sir.

Q. Did you own your home at that time?

A. Yes, sir.

Q. Was it a homestead?

A. It was a homestead, that is, by my father; I bought it from him.

Q. Did you go over this timber claim?

A. Yes, sir.

Q. How far was it from your home?

A. It was about eighteen miles.

Q. And did you file just after you had been over the claim? A. Yes.

Q. Who prepared the filing papers that I showed you here a few moments ago? A. Mr. Jansen.

Q. Where did he prepare them?

A. In the land office, I believe.

Q. He came down here with you?

A. He was living here at the time, yes.

Q. What was Mr. Jansen's name?

A. Charlie Jansen.

Q. Charlie Jansen? A. Yes, sir.

Q. Did you pay your own filing fees, or did you borrow the money for it? A. I paid it myself.

(Testimony of Geary Van Artsdalen.)

Q. Did you keep a bank account at that time?

A. No, sir.

Q. After you made your filing do you remember the occasion of your making your final proof?

A. Yes, sir. [767—437]

Q. Who notified you of the time to make proof?

A. I don't know who it was now. I got notice that it was time.

Q. You went over this land the first time some time before you filed? A. Yes, sir.

Q. And did you go over it alone that time, or with somebody? A. I went with somebody.

Q. Who were you with?

A. I was with Jack Maloney and Charlie Miles.

Q. Anyone else? A. That was all.

Q. Did you ask them to go with you, or was it just a pleasure trip you were on?

A. No, they was to go with me.

Q. Is this claim near the Myers claim?

A. I don't know. I don't know where Myers' claim is.

Q. Were they practical woodsmen?

A. Yes, sir.

Q. Was Mr. Myers a practical woodsman?

A. Miles, I said, Charlie Miles.

Q. What did you expect to do with this timber, Mr. Van Artsdalen?

A. Well, I supposed I would sell it after some length of time, which I did.

Q. You came to the land office to make your final proof? A. Yes, sir.

(Testimony of Geary Van Artsdalen.)

Q. Do you remember how much money you paid in the land office on that occasion?

A. It was four hundred and something. I don't remember just—

Q. Did you pay it by check or in cash?

A. I paid it in cash.

Q. Did you borrow any of that money?

A. No, sir.

Q. How long had you had that money? [768—438]

A. Oh, I had had it quite a little bit.

Q. About how long?

A. I hadn't had it all so very long,—six months or something like that.

Q. You had had some of it for six months, had you?

A. Some of it longer than that.

Q. How long was the longest time you had had any of it?

A. Oh, I don't know. I had had some of it all the time; I always have a little money.

Q. Did you borrow any of the money about the time you made your final proof? A. No, sir.

Q. You have sold your claim, have you?

A. Yes, sir.

Q. To whom did you sell it?

A. To the Clearwater Timber Company.

Q. With whom did you negotiate the sale?

A. Fitzgerald.

Q. What Fitzgerald?

A. Fitzgerald, that is all I know of his name.

(Testimony of Geary Van Artsdalen.)

Q. Was he an agent of the Clearwater Timber Company?

A. I suppose he was; he had an option on it.

Q. How long had he an option on it?

A. He had an option for thirty or sixty days, I don't know which.

Q. How long after you made proof did you sell?

A. I don't remember.

Q. The same day you made proof?

A. No, it was several months. It was maybe six months, maybe more. I don't know just how long I did hold it,—maybe it was a year,—I don't know.

Q. How much did you get for your claim?

A. I got \$1500.00.

Q. Where did you close this transaction? [769—
439]

A. I closed it here.

Q. In whose office?

A. Let's see. I don't know whose office it was now.

Q. Where did you go to sign the deed?

A. I don't recall just the place.

Q. Can't you recall the location, or is it that you can't remember the name of the person's office?

A. That part of it seems to have slipped my memory; I don't just remember.

Q. Did you see Mr. Nat Brown in the transaction?

A. No, sir.

Q. Were you in the Lewiston National Bank in relation to the transaction?

A. It don't seem to me that I was.

Q. Did Mr. Fitzgerald give you a check in pay-

(Testimony of Geary Van Artsdalen.)

ment for this claim? A. No.

Q. Do you remember where he paid you the money?

A. He paid me part of it at home, and I don't know where he did pay the balance.

Q. How much did he pay you up at your home?

A. Let's see. I don't recall just how much it was now.

Q. How much actual cash did he give you altogether? A. I can't tell you that now either.

Q. Was any of it taken out for anything, any of the \$1500.00? A. No.

Q. Then, did he pay you \$1500.00?

A. He didn't pay all of it at one time. No, he paid me part of it on the option, and later on he paid me the balance.

Q. How much did he pay you when he took the option? A. He paid I think it was \$500.00.

Q. Was that after you made proof?

A. Yes, sir.

Q. Was the option in writing? [770—440]

A. Yes, sir.

Q. Where was that prepared?

A. That was prepared at Weippe.

Q. What was your purpose in coming down here to execute the deed? A. I don't know.

Q. Did you bring your wife? You didn't have a wife at that time, did you?

A. No, I didn't have a wife at that time.

Q. Now, can you remember where you signed that deed?

(Testimony of Geary Van Artsdalen.)

A. No, I can't recall where I did sign it.

Q. Did Mr. Fitzgerald have an office here?

A. No, I think not.

Q. Haven't you any remembrance whatever of the transaction here?

A. No, it don't seem to me that I can remember where the deed was signed. I have forgot that part of it altogether.

Q. Did you meet him here by appointment?

A. Why, if I met him at all it was by appointment, but I don't—

Q. Well, did you close the transaction with Mr. Fitzgerald, or did somebody else close the transaction for you? A. Let's see.

Mr. GORDON.—Can't you remember?

A. No, I can't recall where I did sign the deed at all.

Q. When you gave him the option did you give him a deed to be held in escrow?

A. No, I don't think I did. He had an option drew up there and I signed the option.

Q. Didn't you give him a deed at the same time, and it was to be held in some bank until the money was paid, and that you went to the bank and signed the deed and got so much money? A. No.

Q. You have no recollection whatever of signing the deed?

A. No, I haven't any recollection whatever of signing the deed. [771—441]

Q. Are you sure you did sign a deed?

A. Well, I guess I must have, or else it would be

(Testimony of Geary Van Artsdalen.)

mine yet, wouldn't it? (Laughing.)

Q. I guess it would.

A. It seems to have slipped my mind altogether; I can't recall.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Geary Van Artsdalen, dated October 31, 1903, the nonmineral affidavit, the notice for publication, the testimony of Geary Van Artsdalen on final proof, the cross-examination of Van Artsdalen taken at the same time, all of which papers have been identified by the witness; the testimony of the witnesses at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated January 11, 1904, certified copy of the patent issued to Mr. Geary Van Artsdalen, dated November 1, 1904, all relating to the entry of the northeast quarter of section 25, township 37 north of range 5 east of Boise meridian.

Said above-mentioned papers were thereupon marked by the stenographer as Exhibits 22, 22A, 22B, 22C, 22D, 22E, 22F, 22G, 22H, 22I, 22J, 22K, 22L, and 22M.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to each of the documents, on the ground that they are irrelevant and immaterial, it affirmatively appearing that the defendants, or none of them, had any connection with the entry, that they never owned the land, and that the entry is legal in every respect. The defendants further severally object to the final proof papers, on the ground that they are irrelevant

(Testimony of Geary Van Artsdalen.)

and immaterial, and matters occurring long after the filing of the sworn statement.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Van Artsdalen, as I understand you, you had no agreement to sell your land to anyone before you made your final proof?

A. No, sir, I didn't.

Q. And you never did sell it to either of the defendants? A. No, sir.

Q. And had no agreement to sell it to either of the defendants? [772—442] A. No, sir.

[**Testimony of Bertsel H. Ferris, for Complainant.**]

BERTSEL H. FERRIS, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Bertsel H. Ferris?

A. Yes, sir.

Q. How old are you, Mr. Ferris?

A. Thirty-five.

Q. Where do you reside? A. Lewiston, Idaho.

Q. How long have you resided in Lewiston?

A. About eight or nine years.

Q. Are you married? A. Yes, sir.

Q. Were you married in March, 1903?

A. Five years ago last Christmas.

Q. Then, you weren't married in March, 1903?

A. No, sir.

(Testimony of Bertsel H. Ferris.)

Q. What was your occupation at that time?

A. Electrician.

Q. Do you still follow the same business now?

A. Yes, sir.

Q. What was your salary in 1903?

A. About \$65.00 or \$70.00 at that time.

Q. Per month? A. \$65.00 or \$75.00.

Q. Do you remember when you came to Idaho?

[773—443]

A. I came out first in 1892. I was out two or three years and went back, then came out the last time in 1901, I think, or 1902.

Q. 1901 or 1902? A. Yes, sir.

Q. Do you remember taking up a claim under the timber and stone act in March, 1903?

A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated March 31, 1903, signed Bertsel H. Ferris, and ask you if you signed that and filed the same in the land office about the date it bears?

A. Yes, sir, that is my signature.

Q. I show you the testimony of Bertsel H. Ferris, given on final proof, dated June 26, 1903, and ask you if you signed that paper.

A. Yes, sir, that is my signature.

Q. I show you the cross-examination of Bertsel H. Ferris, taken at the same time, and ask you if that is your signature? A. Yes, sir.

Q. I show you a note, dated March 31, 1903, for \$125.00, payable to the order of Curtis Thatcher one year after date, signed Bertsel H. Ferris.

(Testimony of Bertsel H. Ferris.)

A. Yes, sir, that is my signature.

Q. You signed and delivered that to whom?

A. Clarence W. Robnett.

Q. Who first spoke with you about taking up a timber claim, Mr. Ferris?

Mr. TANNAHILL.—We object to any evidence of the witness relative to his taking up a timber claim, on the ground that it is irrelevant and immaterial, the entry of the witness not being involved in any of the actions.

A. Mr. Clarence Robnett.

Mr. GORDON.—Did you know William F. Kettenbach at the time you took up your [774—444] timber claim? A. Yes, sir.

Q. Intimately acquainted with him?

A. I had met him.

Q. Did you know Mr. George H. Kester at that time? A. Yes, sir.

Q. Now, state what conversation Mr. Robnett had with you relative to taking up this timber claim.

Mr. TANNAHILL.—We object to any conversation between Mr. Robnett and the witness, upon the ground that the defendants were not present and on the ground that it is hearsay, irrelevant and immaterial.

Mr. GORDON.—Proceed, Mr. Ferris.

A. I met Mr. Robnett on the street, and he asked me if I wanted to take a claim, and I told him I did, but I didn't have the money to take it with, and he said he could fix that he thought, he could get the money for me.

(Testimony of Bertsel H. Ferris.)

Q. Well, what else was said?

A. He said if I would come up to the house we would talk it over, and I asked him if he could get a claim for a friend of mine, Mr. Robinson, and he said he thought he could.

Q. What Mr. Robinson?

A. George Ray Robinson.

Q. Now, was anything said in that conversation as to what you could get out of your claim?

A. Not that I remember of.

Q. Was anything—

A. He said he thought he could sell it for us.

Q. Did he tell you how much you could get for it?

A. I don't remember.

Q. Was anything said at that time about who would pay the expenses of the filing, etc.?

A. No, sir. I paid that myself. [775—445]

Q. Was anything said about a location fee?

A. Why, I signed a note for the location. I don't know whether there was anything said about it at that time or not.

Q. Did anybody locate you?

A. Mr. William Benton took us up there. We went up the river with him.

Q. Tell where you went with Mr. Benton.

A. We went up above Big Island on the river.

Q. How far is that from here?

A. I don't know just how far it is.

Q. Well, about how far?

A. Probably fifty miles by the railroad.

Q. How far was the claim from there?

(Testimony of Bertsel H. Ferris.)

A. I don't know just how far; I couldn't say.

Q. Have you ever been on the claim?

A. We went up there towards it, above Big Island, and I thought I was on it or near it at that time; I don't know whether I was.

Q. Did you think you were on the claim?

A. I thought at the time that I was on the claim, because I understood it went down to the river.

Q. Did Mr. Robinson and you and Mr. Benton go together? A. We was all in a bunch.

Q. Wasn't there some discussion about not going to the claim? A. I don't remember.

Q. Don't you remember whether or not Mr. Benton told you you were within twelve or fifteen miles of the claim, and that under the arrangement you had you didn't have to go on the claim?

A. I don't remember. We were up the year before, or I was, in fact further over eight or nine miles from there.

Q. Yes, but I am speaking about this occasion. You have testified at one or two trials before, haven't you, Mr. Ferris? A. Yes, sir.

Q. And you came to my office Friday or Saturday evening, did you not? [776—446] A. Yes, sir.

Q. And you read the testimony over that you gave at those trials? A. Yes, sir.

Q. Was there anything in the printed testimony of those trials that wasn't correct?

A. Not that I remember of.

Q. Do you remember whether or not that question was asked you at the former trial?

(Testimony of Bertsel H. Ferris.)

A. No, I don't. It probably was.

Q. Do you remember whether or not Mr. Robnett suggested that it wasn't necessary to go on the claim, and that if you took the time to go clear up to the claim that it might be filed on before you had time to make an entry? A. Yes, sir.

Q. That was before you filed, wasn't it?

A. Yes, sir.

Q. When was that conversation with Robnett?

A. I think it was at his house, if I am not mistaken, or in the directors' room at the bank, I don't know which now.

Q. Before you filed?

A. He said we had better file right away, because it may be too late, someone might get in ahead of us.

Q. Now, who told you to go to see Mr. Benton?

A. Mr. Robnett.

Q. Did you make that arrangement with Mr. Benton, or were your arrangements made with Mr. Robnett? A. They were made with Robnett.

Q. What did you have to say when you went to see Benton?

A. Well, I didn't see him I don't think until we started up there.

Q. Did you start from here alone?

A. No, there was several of us went.

Q. Who went with you? [777—447]

A. Why, Mr. Achin, Mr. Allen and Mr. Robinson. I don't remember any of the others. There were two or three more.

Q. Who gave you the description of the land that

(Testimony of Bertsel H. Ferris.)

you were to file on? A. Mr. Robnett.

Q. Mr. Benton didn't give you the description of it, did he? A. No, sir.

Q. You went up above Big Island somewhere and then returned? A. Yes, sir.

Q. How long after you returned was it before you went to see Robnett? A. I don't remember.

Q. Well, was it the next day or a week or how long was it? A. I can't say.

Q. Where did you go to see him? Where was he?

A. I met him on the street awhile afterwards, I don't know just how long, and he told me when we would have to prove up.

Q. No,—I am talking about before you filed now.

A. Oh, before we filed.

Q. Yes.

A. Why, we filed before we went up there.

Q. You filed before you started up there?

A. Yes, sir. I think it was the next day after we was up to the house, if I am not mistaken.

Q. This was before you met Benton?

A. Yes, sir.

Q. And before you had started out towards the land even? A. Yes, sir.

Q. Where did you get your filing papers?

A. I don't— I think, if I am not mistaken, that we got them in the directors' room at the bank, if I am not mistaken.

Q. At the Lewiston National Bank? [778—448]

A. Yes, sir. At any rate I went over to Nickerson's office across the street and had them made out.

(Testimony of Bertsel H. Ferris.)

Q. Who went with you to the directors' room in the bank to see Mr. Robnett? A. Mr. Robinson.

Q. George Ray Robinson? A. Yes, sir.

Q. Did Robnett go with you over to Nickerson's office? A. No.

Q. Did he give you any paper to take over there?

A. I don't remember now whether I got the paper there or got it over to Nickerson's. That isn't clear.

Q. And you went to Mr. Nickerson's office, did you? A. Yes, sir.

Q. And he prepared the papers there for you?

A. I think so. He fixed out something. I know I paid him a \$1.00 fee.

Q. Was there any discussion between you and Mr. Robnett as to an affidavit you should have to make in that sworn statement that you have identified?

A. He said we would have to swear we had been on the ground.

Q. Did you demur to that?

A. I told him that I hadn't been on the ground.

Q. What did he say?

A. He said that I had been up near there the year before, and that I could say I had been on the ground and it would be all right.

Q. This note that I showed you that you identified runs to Curtis Thatcher. Did you know Mr. Thatcher? A. Yes, sir.

Q. Had you ever done any business with him?

A. I never had; no, sir. [779—449]

Q. Now, was Robnett to furnish you all the money for the taking up of this claim?

(Testimony of Bertsel H. Ferris.)

A. He was to furnish money for the location and estimation, as I understand, and the proving up.

Q. And the proving up? A. Yes, sir.

Q. And what were you to do with this land?

A. I was to sell it.

Q. Who to?

A. Whoever I could. I gave an option on it.

Q. Wasn't there any arrangement before you gave an option?

A. No. He said he would try to sell it for me.

Q. When was he to try to sell it?

A. Well, I don't remember of any particular time.

Q. You went up there in March, did you not? I mean you filed your papers in March?

A. I think so.

Q. And in your first talk with Robnett wasn't he to procure the purchaser before July?

Mr. TANNAHILL.—We object to that as leading and suggestive. This is your own witness, and you have no right to cross-examine him or ask him such leading questions.

A. I don't remember of any particular time, Mr. Gordon.

Q. There wasn't any particular time set?

A. Not that I remember.

Q. Did you know that Robnett had been in that business, furnishing people money to take up claims?

A. No, sir, not until he made the arrangements with me to get the money.

Q. Now, was it your understanding that you were

(Testimony of Bertsel H. Ferris.)

to turn the claim over to him, or to whoever he suggested?

Mr. TANNAHILL.—Objected to as leading and suggestive. [780—450]

A. No, I had no arrangements only as much as he said he would try to sell it for me.

Q. When was he to—how much was he to get over and above what the expenses were?

A. I don't know as I remember; I don't remember of any especial amount.

Q. Was any amount mentioned?

A. No, not that I remember of.

Q. What was your understanding that Robnett wanted with this claim?

Mr. TANNAHILL.—We object to that as immaterial, and we object to it on the further ground that the witness never testified that Robnett wanted the claim.

The reporter thereupon read the last question.

A. I had no understanding.

Q. You had no understanding?

A. No, not that I remember of.

Q. Did you think it strange that somebody should come to you and offer to lend you the money to take up a timber claim, and loan you the money to pay for it, and was to procure a purchaser, without any interest in it himself?

Mr. TANNAHILL.—We object to that as leading and suggestive and immaterial.

A. I never thought much about it, Mr. Gordon.

Mr. GORDON.—Q. Did that seem to you to be an unusual proceeding?

(Testimony of Bertsel H. Ferris.)

A. Yes, it seems so now. I never thought about it before. If I had thought much about it I probably wouldn't have taken it in the first place.

Q. Now, you went to the land office when you made your sworn statement and swore that you had been on the ground. Is that correct?

Mr. TANNAHILL.—We object to it as immaterial, and on the further ground that it wasn't necessary for him to be on the land, and if he [781—451] hadn't been on the land and did say he had been on the land it wasn't perjury, and it is immaterial and irrelevant.

The last question was thereupon repeated by the stenographer.

A. Yes, sir.

Mr. GORDON.—Q. You knew that wasn't true when you went there, didn't you?

Mr. TANNAHILL.—Objected to as immaterial.

A. Yes, sir.

Mr. GORDON.—Q. And you and Robnett had talked that over, had you?

Mr. TANNAHILL.—Objected to as immaterial and leading and suggestive.

A. Yes, sir.

Mr. GORDON.—Q. Who notified you of the time you were to make proof? A. Mr. Robnett.

Q. What was said about it? That it was time to make proof, or what? A. That was all, I believe.

Q. Was anything said about the money?

A. He said at the time, "Come over to the bank and I will get the money to prove up on."

(Testimony of Bertsel H. Ferris.)

Q. And you went over to the bank?

A. Yes, sir.

Q. With whom did you go to the bank?

A. I went with Mr. Robinson, I believe, both of us, if I am not mistaken.

Q. Is Mr. Robinson related to you? A. No, sir.

Q. Are you in any way related to any of the defendants? A. No, sir.

Q. And when you went over to the bank whom did you see? A. Sir? [782—452]

Q. Whom did you see at the bank when you went there on this occasion? A. Mr. Robnett.

Q. In what part of the bank did you see him?

A. I don't remember whether it was—I know I got the money at the teller's window, I believe, in front. I don't remember.

Q. Then, where did you go?

A. I went upstairs to the land office upstairs.

Q. Had you talked to Mr. Robnett before you got the money at the teller's window in the bank?

A. I don't remember.

Q. I will ask you whether or not you remember going back into the directors' room again with Mr. Robnett just prior to making final proof, and you and Mr. Robinson had some talk there with him?

A. We were there a couple of different times in the directors' room. I don't remember whether it was that occasion or not, and we looked over some papers in there. I don't know whether it was before the filing or the final proof.

Q. Do you remember what these papers related to?

(Testimony of Bertsel H. Ferris.)

A. I don't know whether it was final proof papers at that time or the others, when I was in there. That isn't clear, it has been so long ago.

Q. Now, on those papers that were shown you by Mr. Robnett were the questions written out?

A. Yes, sir.

Q. And were answers made to them?

A. I think so.

Q. Do you remember whether or not this testimony that you have identified as given by claimant on final proof and cross-examination of you, taken in the land office at final proof, which you have identified, was shown you in blank at that time?

A. I have seen the papers. I signed them. [783—453]

Q. I know. But what I am trying to get at is whether you and Mr. Robnett and Mr. Robinson went over papers similar in form to those just before you made your final proof, and discussed the propriety of answering the questions. A. We did.

Mr. TANNAHILL.—We object to it as immaterial and irrelevant.

WITNESS.—I can't think whether it was these papers or the application, the filing.

Mr. GORDON.—Q. I understood you to say you went over the filing papers too, did you not, the first time you were at the bank? A. Yes.

Q. And that was the time you had the discussion as to whether it was proper to swear that you had been on the land? A. Yes, sir.

Q. Now, do you remember these papers when you

(Testimony of Bertsel H. Ferris.)

went to make your final proof, or were they shown you at the first time too? A. I think they were.

Q. And you were given some money by Mr. Robnett that day? A. For the final proof, yes, sir.

Q. How much?

A. Four hundred and some odd dollars, I believe; I forget the amount.

Q. And the land office was in the bank building at that time, was it not? A. Upstairs; yes, sir.

Q. I understand that you were given that money in the bank by Mr. Robnett? A. Yes, sir.

Q. Where did you go from the bank? Directly upstairs? A. Yes, sir.

Q. And you made your final proof? [784—454]

A. Yes, sir.

Q. And paid the money in that Mr. Robnett had given you? A. Yes, sir.

Q. Now, do you remember while you were in the bank with Mr. Robnett at that time whether or not you discussed the questions that would be asked you as to where you received the money, and what you should say about that?

Mr. TANNAHILL.—Objected to as immaterial.

A. I don't remember hardly.

Mr. GORDON.—Q. Can't you answer?

A. I can't remember; I don't remember, Mr. Gordon.

Q. Was it the same money that Robnett gave you that you made your final proof with? A. Yes, sir.

Q. Did you use any of your own money?

A. I paid for the making out of the papers, that

(Testimony of Bertsel H. Ferris.)

is, for the final proof, I think, with my own money. I paid all my own expenses.

Q. No, but I mean, I am speaking about the money you paid at the land office to purchase this land. Did you pay any of your own money for that?

A. Yes, sir.

Q. How much?

A. Ten or twelve dollars, something like that, I think.

Q. Wasn't it the first time you went to the land office that you paid that ten or twelve dollars?

A. It may have been.

Q. Don't you know there wasn't any fee when you made your final proof?

A. It was on the application I know I paid the fee.

Q. Do you remember whether or not this question was discussed with you by Mr. Robnett just before making your final proof: "Where did you get the money with which to pay for this land and how long have you had [785—455] the same in your actual possession?" Do you remember whether you and Mr. Robnett discussed that question?

A. No, I don't.

Mr. TANNAHILL.—The Court understands that we have an objection to all of this evidence relating to the final proof.

The SPECIAL EXAMINER.—Yes, that can be so understood.

Mr. GORDON.—Q. Do you remember that you answered: "Earned most of it in my trade and borrowed the balance?"

(Testimony of Bertsel H. Ferris.)

A. Yes, sir, I remember it now.

Q. Was that true or was it not true?

A. Well, I earned part of it.

Q. What part of it did you earn?

A. My filing fee and my expenses.

Q. But the question at that time was, "Where did you get the money you were paying in the land office at that time?" You got all that money from Robnett, didn't you? A. Yes, sir.

Q. Then, why did you answer the question as you did?

Mr. TANNAHILL.—We object to that as immaterial and leading and suggestive.

Mr. GORDON.—Q. Didn't you and Mr. Robnett go over that question? A. I guess so.

Q. I don't want you to guess at it. If you don't know, say so. A. I don't remember, Mr. Gordon.

Q. You signed that paper that I am reading from, did you not? A. Yes, sir.

Q. Do you remember this question being asked you when you paid that money that you got from Robnett into the land office—question 16: "Did you pay out of your own individual funds all of the expenses in connection with making this filing, and do you expect to pay for the [786—456] land with your own money?" To which you answered: "Yes. Yes." Do you remember that question being asked you and that answer made by you?

A. Yes, sir.

Q. Was that answer true or not true?

A. It wasn't true.

(Testimony of Bertsel H. Ferris.)

Q. And you knew it at the time, did you not?

A. Yes, sir.

Q. Did you discuss that question with Mr. Robnett? A. I think so.

Q. Now, at the time that you paid the money in the land office at final proof they gave you a receipt for it, did they not? A. I think so, yes.

Q. Do you remember what you did with that receipt? Did you take that down and give it to Mr. Robnett? A. I don't remember.

Q. Did you make a note that day to secure the money that you had gotten from Robnett?

A. I signed a note, yes, sir.

Q. Do you remember how much it was for?

A. Seven hundred and some odd dollars.

Q. Was it \$728.75? A. Yes, sir.

Q. Now, you never met Mr. Curtis Thatcher in this transaction, did you? A. Not at all.

Q. And the note that you signed for \$125.00, you made that the date that you made your filing, did you? A. I am not sure about it; I think so.

Q. It bears the same date.

A. Yes, sir. It must have been.

Q. And you gave that to Robnett? [787—457]

A. I took up that note with the other one, I think.

Q. You took that one up with the \$728.00 note?

A. Yes, sir.

Q. Do you know how that \$728.00 note was endorsed? A. No, I don't remember now.

Q. Wasn't that to C. W. Robnett?

A. I think so. I think it was.

(Testimony of Bertsel H. Ferris.)

Q. Do you remember whether or not when it was handed back to you it was endorsed C. W. Robnett to William F. Kettenbach, without recourse?

A. Yes, sir.

Mr. TANNAHILL.—We move to strike out that answer, on the ground that the note is the best evidence.

Mr. GORDON.—I will produce it if you want me to. Whatever you object to that way I will put in. I am just doing this in the economy of time, is all.

Q. Do you remember the same date that you made your proof that you gave a mortgage to Mr. Robnett to secure the payment of that note?

A. Yes, sir.

Q. Now, how long after that did you make a deed to this property?

A. I don't remember, Mr. Gordon.

Q. Well, approximately?

A. I signed it over to Mr. W. F. Kettenbach; it was probably a couple of years or so, two years.

Q. What was that transaction?

A. I had a notice from him that the note was due,—two different ones, I believe. Then, I got a notice that the mortgage,—that was what I meant, the mortgage,—they were going to foreclose, so I just went up and signed it over to him, my wife and I.

Q. Did you get any money out of him?

A. No, sir.

Q. I show you letter dated June 15, 1906, addressed to Bertsel H. Ferris, signed W. F. Ketten-

(Testimony of Bertsel H. Ferris.)

bach, and ask you if that is the letter you [788—
458] received from Mr. Kettenbach? A. It is.

Q. Do you know Mr. Kettenbach's handwriting?

A. No, I don't.

Mr. GORDON.—Do you want me to prove that too?

Mr. TANNAHILL.—No. Mr. Kettenbach admitted it in the other trial.

WITNESS.—I received one or two of those. I don't recognize the handwriting, of course.

Mr. GORDON.—It is admitted that that is Mr. Kettenbach's signature, is it?

Mr. TANNAHILL.—Yes.

Mr. GORDON.—Q. It was just about this time, was it, that you made the deed to him?

A. I don't remember just how long afterwards. I think I received two of those notices, if I am not mistaken.

Q. Did you ever pay any interest on that note that you gave? A. I don't know as to that.

Q. Well, do you remember ever paying any interest on it? A. No, I never paid any.

Q. Do you know whether you were ever asked to pay the note or any interest on it?

A. No. I met Robnett one day and he told me,—I don't know just when it was,—that Kettenbach wanted me to fix that up.

Q. Where did you make the deed? In the bank?

A. Oh. You mean the final transaction?

Q. Yes.

(Testimony of Bertsel H. Ferris.)

A. No. In McDonald's office was where it was made over.

Q. Who told you to go there?

A. I don't remember now who it was.

Q. Well, did any of the parties you have mentioned tell you to go there, or did you just go there of your own notion? [789—459]

A. Well, I don't remember; that isn't clear now, Mr. Gordon.

Q. To whom did you deliver the deed?

A. McDonald, I think.

Q. You left the deed there with McDonald?

A. I signed it over there at McDonald's office.

Q. Was anybody present but you and McDonald and your wife? A. No, no one present.

Q. Did you receive any money in payment for this property? A. Nothing at all.

Q. Were the notes handed back to you at that time that you had given? A. I think so.

Q. Did you ever get any money out of this claim?

A. Nothing at all.

Q. Were you out the expense you had been put to for your filing fee? A. Yes, sir, everything.

Q. Did you have to pay any expenses in this matter? A. Sir?

Q. Did you have to pay any expenses in this matter other than the filing fee? A. No, sir.

Q. Was there a charge put against you for attorney's fees?

A. No, sir, not that I remember of.

Q. Did I ask you whether or not, the day before

(Testimony of Bertsel H. Ferris.)

you made your final proof, you, at the suggestion of Robnett, went to the bank and talked over the final proof questions?

Mr. TANNAHILL.—The same objection as to the other questions.

A. You asked that once, didn't you?

Mr. GORDON.—Q. I say, did I understand you to say that you did?

A. I think so. [790—460]

Q. Mr. Robinson was present at the time?

A. Yes, sir.

Q. And this conversation was in the director's room at the bank? A. I think so.

Q. The first time that you talked with Robnett about taking up a claim you asked if he could get one for your friend Robinson under the same conditions? A. Yes, sir.

Q. You didn't sign this last note that you have referred to, for seven hundred and some odd dollars, until after you made your proof. Is that correct?

A. I don't remember when it was just, whether it was before or after.

Q. Do you remember whether or not you went down from the land office to the bank and then signed that note?

A. I signed something when I got the money; I don't remember whether there was anything afterwards or not.

Q. Do you remember testifying at the trial against Mr. Robnett in October or November, 1906, in case No. 1607, Circuit Court of Appeals, Ninth

(Testimony of Bertsel H. Ferris.)

Circuit, the question being asked you: "Did you go right back down to the bank?" "Answer. Yes, sir." From the context it would appear that that was when you made your final proof. "Question. At whose suggestion?" "Answer. Mr. Robnett's." "Question. What did Mr. Robnett say about it?" "Answer. After he gave me the money he says, 'Come down when you prove up and we will fix it up.' " "Question. And you signed a note and mortgage, did you?" "Answer. I think so. I signed a note, I know." "Question. Where were you when you signed it?" "Answer. At the window in front of the bank." "Question. Who presented you the note for your signature?" "Answer. Mr. Robnett." Does that refresh your recollection as to whether it was before or after?

A. Yes, sir. [791—461]

Q. Now, which was it?

A. It was after. I remember now. I wasn't sure whether it was or—

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Bertsel H. Ferris, the testimony of Bertsel H. Ferris given on final proof, and the cross-examination thereof, which papers have been identified by the witness; the receiver's receipt and the register's certificate, dated June 26, 1903, the note signed Bertsel H. Ferris, dated March 31, 1903, to the order of Curtis Thatcher, for \$125.00 in one year, which has been identified by the witness, the letter dated June 15, 1906, addressed to Bertsel H. Ferris, signed William F. Kettenbach, which has

(Testimony of Bertsel H. Ferris.)

been heretofore identified; certified copy of patent issued to Bertsel H. Ferris, dated August 3, 1904, all relating to the entry of lot 3, and the northwest quarter of the southeast quarter and the north half of the southwest quarter of section 24, township 39 north of range 3 east, Boise meridian. We also offer certified copy of mortgage, dated June 26, 1903, made by Bertsel H. Ferris to Clarence W. Robnett, to secure note dated June 26, 1903, payable in one year, in the sum of \$728.75, to the order of Clarence W. Robnett, executed and acknowledged by Bertsel H. Ferris June 26, 1903, before John E. Nickerson, Notary Public, and recorded at the request of W. F. Kettenbach July 1, 1903. This note here is endorsed by Robnett and Benton. Now if you want me to bring them in here to identify that I can do so.

Mr. TANNAHILL.—No, I don't care about that. I wanted the other note that you said was endorsed by Kettenbach without recourse.

Mr. GORDON.—I will bring that down. I haven't that among my papers. You will admit that this note is endorsed by C. W. Robnett and William B. Benton?

Mr. TANNAHILL.—Yes.

The above documents were thereupon marked by the stenographer as Exhibits 23, 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23H, and 23I. [792—462]

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers just offered in evidence, but severally object to each and all of the documents upon the ground that they are

(Testimony of Bertsel H. Ferris.)

incompetent, irrelevant and immaterial, the entry of the witness not being involved in any of the actions. And the defendants further severally object to all of the final proof papers, including the testimony of claimant, the cross-examination of claimant, the testimony of his witnesses and the cross-examination of his witnesses, upon the ground that they are irrelevant and immaterial.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Ferris, I understand that you had no agreement with Mr. Robnett or anyone else for the sale of your land before you made final proof? You hadn't agreed to sell your land to anyone before you made final proof?

A. Only that Mr. Robnett said he would try to sell it for me.

Q. But you had no agreement that you would sell it to any particular person? A. No, sir.

Q. Then, your affidavit that you made when you filed your sworn statement, "that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to apply the same to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That affidavit was true, was it?

(Testimony of Bertsel H. Ferris.)

A. Well, Mr. Robnett said he would try to sell it for me, that is all. [793—463]

Q. Well, you understand that that isn't a contract for the sale of it. You had made no contract?

A. I had signed no contract.

Q. To sell it to Robnett or to anyone else?

A. No.

Q. Then, that affidavit that you made at that time was true? A. Yes, sir.

Q. Now, you had had no talk with Mr. Kester or Mr. Kettenbach or Mr. Dwyer about it up to the time you made your final proof, had you?

A. No, sir.

Q. The first talk you had with either of them about it was after Mr. Kettenbach notified you that your note was due?

A. No, I had no talk with him then; he simply wrote me those notes.

Q. Did you have a talk with Mr. Kettenbach about it after he wrote you?

A. I don't remember of ever having any talk with him.

Q. You had no talk with him about it in which he told you you had better keep your land and try to pay the interest?

A. I don't remember as to that, Mr. Tannahill.

Q. And you had kept your land about how long, did you say you kept it before you sold it?

A. Well, it was two or three years; I think it was two years anyway.

Q. And that is your first agreement or contract

(Testimony of Bertsel H. Ferris.)

that you had made for the sale of your land?

A. Sir?

Q. That was the first contract or agreement you had made for the sale of your land up to that time?

A. Which?

Q. The one you made two or three years afterwards, when you sold to Kettenbach. [794—464]

A. When he took it on the mortgage.

Q. Had you tried to sell it to anyone else?

A. I gave an option to sell it.

Q. Who did you give an option to?

A. Fred Emory.

Q. Did you give an option to anyone else?

A. I think I gave two; I don't remember who the other one was to.

Q. Do you remember that you gave two options to Fred Emory and one option to Joe Malloy?

A. That may be.

Q. But you wasn't able to sell it to either one of them? A. No.

Q. Do you remember that Mr. Kettenbach told you he would rather not buy your land, that he would rather you would pay off the note and mortgage? A. I don't remember that.

Q. He might have told you that?

A. He might have. I don't remember having any conversation with him.

Redirect Examination.

(By Mr. GORDON.)

Q. Now, I have noticed that you said a couple of times, in answer to Mr. Tannahill's questions, that

(Testimony of Bertsel H. Ferris.)

you had no written contract.

Mr. TANNAHILL.—We object to that. The witness didn't say that.

Mr. GORDON.—Well, I will call the record on you.

Thereupon the stenographer read the answer of the witness as follows: "I had signed no contract."

WITNESS.—I thought Mr. Tannahill meant if there had been a contract or anything presented to me to sign. I done nothing at all like that.

Mr. GORDON.—Q. But your original understanding with Robnett was that he was to [795—465] sell the land for you? A. Yes, sir.

Q. And that understanding was had before you filed any paper?

A. That he would sell it for me, yes, sir.

Q. Would you have sold to anybody else at that time? A. Yes, sir.

Q. You would? A. I would.

Q. Didn't you feel under any obligation to Mr. Robnett at all? A. I did not.

Q. Not from your agreement with him that you had had?

A. I hadn't thought about selling it before at all.

Q. You were taking it up to sell, weren't you?

A. Yes, sir.

Q. Did you feel that you had no obligation to Mr. Robnett whatever, that you could sell it to whom-ever you wanted to, whenever you got ready?

A. I never thought about it at all.

Q. Were you very well acquainted with Mr. Robnett at that time? A. Yes, sir.

(Testimony of Bertsel H. Ferris.)

Q. Had you ever borrowed any money from him?

A. No, sir.

Q. Had you ever had any business transactions with him? A. None at all.

Q. And he came to you and solicited you to take up a claim, as I understand? A. Yes, sir.

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Q. And told you he would furnish the money to you?

A. Yes, sir.

Mr. TANNAHILL.—We object to that. He didn't testify that Robnett told him he would furnish the money for him. [796—466]

Mr. GORDON.—Q. And he was to sell it for you?

A. Yes, sir.

Q. And you felt, in the face of all that, that you weren't under any obligation to him?

A. I never thought about it, Mr. Gordon.

Q. Would you have thought it right to sell to anybody but Mr. Robnett?

A. I probably wouldn't, if I had thought about it; I probably would have given him the preference.

Mr. GORDON.—That is all.

At this time a recess was taken until two o'clock.
[797—467]

At two o'clock P. M. the hearing was resumed.

[**Testimony of Hiram F. Lewis, for Complainant.**]

HIRAM F. LEWIS, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Hiram F. Lewis?

A. Yes, sir.

Q. Where do you reside, Mr. Lewis?

A. Lewiston, Idaho.

Q. How long have you resided at Lewiston?

A. About nine years.

Q. Do you remember of taking up a claim under the timber and stone act? A. Yes, sir.

Q. What year?

A. I forget now—I think it was in 1904.

Q. Well, were you married at the time?

A. Yes, sir, I had been; my wife is dead, though.

Q. Were you married at that time, I say?

A. Yes, sir—before that; my wife was dead at that time.

Q. And of what did your family consist?

A. Myself and my mother and two children.

Q. And how were you employed at that time?

A. I was working for the city of Lewiston.

Q. The city of what?

A. The city of Lewiston.

Q. In what capacity?

A. Assistant city engineer.

Q. And what was your salary? A. \$70.00.

Q. \$70.00 a month? [798—468] A. Yes, sir.

(Testimony of Hiram F. Lewis.)

Q. And by whom had you been employed just previous to that?

A. Well, I had been working for the city of Lewiston ever since I came here up to that time.

Q. Who are you working for now?

A. The Lewiston Gas Company, or the Pacific Power & Light Company.

Q. Well, weren't you employed by Naylor & Norlin at one time? A. Yes, sir.

Q. When was that?

A. Well, that was about that time too. I worked for them on a sewer contract.

Q. How do you mean you worked for them on a contract? A. Well, I was foreman for them.

Q. Did you know Mr. George H. Kester?

A. Yes, sir.

Q. And was he connected with Naylor & Norlin?

A. Not to my knowledge, at that time.

Q. Is he now, or was he afterwards?

A. Yes, sir.

Q. In what capacity?

A. He bought out Charles Norlin.

Q. Then it was the firm of Norlin & Kester?

A. No, sir—Naylor & Kester.

Q. Who spoke to you first about taking up a timber claim?

Mr. TANNAHILL.—We object to the evidence of the witness relative to taking up a timber claim, upon the ground that it is irrelevant, incompetent and immaterial, the claim of the witness not being involved in either of these present actions.

(Testimony of Hiram F. Lewis.)

Mr. GORDON.—Answer the question, please.

A. Why, in regard to taking up a claim?

Q. Yes, sir. [799—469]

A. Why, John Nickerson and Robnett were the first parties that spoke to me about taking up a claim.

Q. Did Mr. William Dwyer solicit you to take up a claim? A. No, sir.

Q. Well, what did Mr. Robnett say to you?

A. Well, at that time Robnett and Nickerson were in the timber business up on the Lolo, and they wanted me to go up there and take a claim. I went up and looked at the timber and didn't like it and didn't take any. Afterwards I came back and met Mr. Dwyer one day and asked him if he had any timber.

Q. Did you ask Mr. Dwyer, or did Mr. Dwyer ask you? A. I asked Mr. Dwyer.

Q. You have testified at several trials before, haven't you, Mr. Lewis? A. Yes, sir.

Q. And you had your faculties with you when you were testifying, did you not.

A. I guess part of them.

Q. The same as you have now?

A. Well, I don't know. The first time I testified, when Mr. Ruick was up there, why they had me in the sweat-box up there, and Mr. Ruick threatened impeachment if I didn't come out and tell things just to suit him; and there were certain things that I told Mr. Ruick and Mr. Johnson, and whenever I

(Testimony of Hiram F. Lewis.)

said anything if it didn't suit them they would cut it out.

Q. Now, but how was it when you went into the trial of the case of Kester, Kettenbach and Dwyer, before Judge Dietrich, in the spring of 1907; did you know what you were testifying to then?

A. Well, they had my testimony just as I had given it in to Mr. Ruick.

Q. I know; but I am asking about the testimony you gave in court; did you tell the truth then?
[800—470]

A. Yes, I guess I did. I don't remember just what I said.

Q. Well, do you guess, or don't you know whether you told the truth or not?

A. Well, I always figure on telling the truth.

Q. Do you remember this question being asked you at the trial of Kester, Kettenbach and Dwyer, referred to in the stipulation made by counsel in these cases as No. 1605 of the Circuit Court of Appeals record, in the trial before the trial jury at Moscow: "Now state, Mr. Lewis, what led you to file this application or sworn statement in the land office. What led up to your application for a timber claim?" "Answer. Shortly after I became acquainted with Mr. Dwyer he asked me one day if I had used my stone and timber right. I told him I had not. He wanted to know if I wanted to take up a claim, and I told him I didn't know. He told me they had some good claims, and if I hadn't used my right that he could locate a claim for me, and he

(Testimony of Hiram F. Lewis.)

afterwards did.” Do you remember that question being asked you, and that answer being give by you?

A. Well, that was prior to the time that I went up there with Robnett.

Q. Now, I am asking you, do you remember that question being asked, and that answer being given by you? A. No, sir, I don’t.

Q. Well, was that answer to that question correct?

A. I think it was, yes, at that time.

Q. Now, when was this you had this talk with Dwyer?

A. I think that was prior to the time—I know it was—it was prior to the time I went up with Robnett up on the Lolo.

Q. Now, what did Mr. Dwyer say to you in this conversation which you had?

A. Well, I couldn’t tell you just what he did say just now.

Q. Well, tell us as near as you can remember.

A. I think I asked him about the claims, and he told me that they [801—471] had some good claims up there, and if I wanted to take one I could make a little money out of it.

Q. Is that the way he expressed it?

A. I think so.

Q. Did he tell you what he would give you for your right for your claim? A. No, sir.

Q. Are you sure of that? A. Yes, sir.

Q. Do you remember, at the same trial that I have referred to a few moments ago, of this question being asked you, or these questions being asked you, and

(Testimony of Hiram F. Lewis.)

of these answers being given to you: "Did you have any further conversation with Dwyer, or with anybody else, prior to your filing the application?"

"Answer. Yes, sir." "Question. With whom did you have that conversation?" "Answer. Mr.

Dwyer." "Question. Where did you have that conversation?" "Answer. I think it was at my

home East of Lewiston, or near my home East of Lewiston." "Question. State the conversation."

"Answer. He came up there one evening and told me they had some claims, and that he would go up and show me one and I could file on it, and also what they would give me for my right—for my claim."

"Question. What did he say he would give you for your right?" "Answer. \$150.00."

A. No, sir—he never said any such a thing.

Q. Didn't you swear to that at that trial?

A. I don't think I ever said that, no, sir.

Q. Will you say that you didn't say it?

A. I don't think I said he would give me \$150.00, because I got more than that.

Q. How much did you get? A. I got \$250.00.

Q. Do you remember these questions being asked you and these answers being made by you?
[802—472]

A. Yes, sir, I think I do.

Q. I show you an affidavit, Mr. Lewis, subscribed and sworn to by Hiram F. Lewis November 1st, 1905, before Francis M. Goodwin, and ask you if that is your name—if that is your signature to the affidavit? I ask you to look at the signature first, and then you

(Testimony of Hiram F. Lewis.)

can read it. Is that your signature? (Exhibiting same to witness.) A. Yes, sir.

Q. And did you swear to that before Mr. Goodwin?

A. I think I must have, yes, sir.

Q. Well, don't you know? I am not asking what you think—don't you know? A. Yes, sir.

Q. Were you telling the truth when you made that statement?

Mr. TANNAHILL.—We object to that. The witness has a right to read the statement before he makes any such an answer.

Mr. GORDON.—Answer the question: Were you telling the truth when you swore to that statement?

A. Well, I don't remember whether I read that over or not. I remember I signed it.

Q. Well, I am not asking you whether the statements contained in there are true; I am asking you whether you told the truth when you made that statement?

Mr. TANNAHILL.—We insist on the witness reading the statement before he answers the question. The witness can refuse to answer until after he reads the statement over.

The SPECIAL EXAMINER.—I don't think he is asking him the contents of it.

Mr. GORDON.—I am asking him if he swore to the truth when he made that affidavit.

Mr. TANNAHILL.—If the Court please, he don't know whether he did or not if he don't know what the contents of the paper was.

(Testimony of Hiram F. Lewis.)

WITNESS.—That is my signature all right.
[803—473]

Mr. GORDON.—And you were telling the truth?

A. Well, I don't know as to the contents.

Q. Did you intend to swear to an untruth?

A. No, sir.

Q. Then, if this is the paper you signed you swore to the truth?

Mr. TANNAHILL.—We object to that. The witness has a right to read the statement before he answers the question.

Mr. GORDON.—Answer the question.

Mr. TANNAHILL.—Well, we object to that. The witness has a right to read the statement before he answers the question.

Mr. GORDON.—Let him decline to answer it, then.

Q. Do you decline to answer the question?

A. No, sir.

Q. Well, then, answer the question.

Mr. TANNAHILL.—Well, I will take the liberty of instructing the witness that he can refuse to answer the question until he reads the statement.

Mr. GORDON.—I am very glad that counsel for the defendants has put himself on record as instructing the Government's witnesses.

Q. Now, read the affidavit, and tell whether that is the truth or not. (Handing said affidavit to the witness, who read the same.)

A. I don't know that I ever read that before. I am pretty sure I never.

(Testimony of Hiram F. Lewis.)

Q. You signed it, didn't you? A. Yes, sir.

Q. And were you given an opportunity to read it over?

A. I don't remember whether I was or not.

Q. Where was this affidavit taken? At your home? A. No, sir.

Q. Where was it?

A. I couldn't tell you whether it was in Moscow or whether it [804—474] was in Lewiston.

Q. Do you know who was present besides Mr. Goodwin at that time?

A. No, I don't. I don't remember.

Q. Now, did you read in this affidavit which you have identified that Mr. Dwyer induced you to take up a timber claim? A. No, sir, he didn't.

Q. I asked you did you read that?

A. I did just now, yes, sir.

Q. Well, I will ask you whether or not that is true?

A. No, sir; he never induced me to take up a claim.

Q. Then, what was said in there wasn't true?

A. Not at that time.

Q. You swore to it, however, though?

A. There are other parts in there that isn't true either.

Q. Do you remember this question being asked you in that affidavit which you swore to: "Just tell the conversation that took place between you and Mr. Dwyer in regard to this claim." "Answer. He told me that he had a good claim for me; it was a home-
stead relinquishment, and that if I wanted to take a claim he would take me up there and show it to me.

(Testimony of Hiram F. Lewis.)

He said he would let me know just what time we could go, and a few days after we went and looked at the claim, and came back and I filed on it." Do you know whether or not that conversation took place? A. Yes, sir.

Q. That is correct, is it? A. Yes, sir.

Q. Do you remember this question being asked you at that time: "Question. He took you on what he said was a claim?" "Answer. I know it was the claim all right. I have surveyed a good deal myself, and I went to the corner stakes. They made a proposition to give me \$150.00."

A. No, sir, that isn't right. [805—475]

Q. You swore to it, however, though, didn't you?

A. Well, I signed a paper, but I say I don't believe I ever read that paper over.

Q. Well, will you say you didn't read it over?

A. Well, no. It is so long ago I don't remember whether I did or not.

Q. You say you won't be positive whether you did read it over?

A. No, sir, I won't say whether I did or didn't at the time. I don't remember, but I know that I never agreed to take no \$150.00; I will swear to that.

Q. Now, that was in November, 1905, and this record that I read to you from is 1605, and now you say you have no remembrance of that? That was in the spring of 1907. Will you say that that wasn't true, either, or that you were not correctly reported there?

A. 1907? Where was that? In Moscow?

(Testimony of Hiram F. Lewis.)

Q. Yes, at Moscow? A. Read that back.

Q. "State that conversation"—and what I read before and the context will show that it was a conversation with Mr. Dwyer—"State the conversation." "Answer. He came there one evening and told me they had some claims, and that he would go up and show me one and I could file on it, and also what they would give me for my right—for my claim." "Question. What did he say he would give you for your right?" "Answer. \$150.00." Now, I ask you whether or not you remember those questions being asked, and that answer being made by you? A. No, sir.

Q. You say you don't remember them?

A. No, sir.

Q. I will ask you whether or not if you made that statement whether it was true?

A. No, sir, it wasn't true; I never offered to take that for the [806—476] claim.

Q. How long have you been under subpoena, Mr. Lewis? A. Since about last Tuesday.

Q. Last Tuesday? A. Yes, sir, I think so.

Q. And how many times have you been with Mr. Dwyer since last Tuesday? A. Only once.

Q. When was that?

A. The other night when you saw me down on the street was all.

Q. Night before last? A. Yes, sir.

Q. That is the only time?

A. That is the only time.

Q. You have never stopped to talk to him on the

(Testimony of Hiram F. Lewis.)

street at any other time? A. No, sir.

Q. Nor any of the other defendants?

A. No, sir.

Q. Have you seen a copy of this record since you testified before? A. No, sir.

Q. Nowhere? A. No, sir.

Q. Are you sure of that? A. Yes, sir.

Q. Did you and Mr. Dwyer discuss this matter?

A. No, sir.

Q. Never mentioned the case?

A. Not since we was at Boise last spring.

Q. Do you remember testifying at the trial of William Dwyer at Moscow, in October and November of 1906? [807—477]

A. Yes, sir, I do.

Q. You remember testifying at that trial?

A. Yes, sir.

Q. I read from your testimony given at that trial, and the record is No. 1606, referred to in the stipulation made between the various parties to these suits at the beginning of the hearing, at page 282 of said record. Do you remember this question being asked you: "How did the subject of your taking up a timber claim come up, Mr. Lewis?" And was this answer made by you: "Answer. Why, I think I met Mr. Dwyer one day and he asked me in the first place if I ever had used my timber right, and I told him I had not, and he said they had some good claims, and wanted to know if I wanted to take one." Do you remember whether that question was asked and whether that answer was made by you?

(Testimony of Hiram F. Lewis.)

A. I think it was; yes, sir.

Q. That is correct, is it? A. Yes, sir.

Q. Do you remember this question being asked, and the answer which I shall read being made by you:

“Question. Well, go on and state what further occurred?” “Answer. And he said he would take me

up and show me one, which he afterwards did, and I came back and filed on it.” “Question. Did you,

before filing, have any talk with Mr. Dwyer concerning the terms on which you would take up this timber

claim? “Answer. Yes, sir.” “Question. What was stated by Mr. Dwyer concerning it? What was the

agreement, if any, made between you and Mr. Dwyer?” “Answer. In regard to taking up the

claim, Mr. Ruick?” “Question. Yes; on what conditions and terms were you to take the claim?”

“Answer. Why, I think he asked me if I had any money of my own, and I told him I had some, and he

said that was all right, and they would furnish me the balance, which was done.” Do you remember

those questions being asked and those answers being given by you? A. Yes, sir.

Q. And they are the truth? The answers are true?
[808—478]

A. I think they are.

Q. Don't you know that they are?

(No answer.)

Q. Answer the question.

A. Yes, I think they are true.

(Testimony of Hiram F. Lewis.)

Q. The next question: "Well, what I want is, what did Mr. Dwyer state further, if anything, concerning this? Was there anything said or agreed upon between you there as to what disposition was to be made of the claim when you got title to it?" "Answer. Yes, sir." "Question. How much was there to be in if for you?" "Answer. They agreed to give me \$150.00."

A. I don't see how that could be, that \$150.00 there, because I never agreed to take that price.

Q. Now, I will ask you if you remember those questions being asked you, and those answers being made by you?

A. I never answered to the \$150.00 proposition; I know that. If I did I didn't intend to at the time.

The SPECIAL EXAMINER.—Counsel asked you if you remember about the questions being asked you, and the answers. That is the first thing; and then, of course, you might explain whether they are true or not.

WITNESS.—Well, yes, sir.

Mr. GORDON.—Q. You say you think those questions were asked and those answers given?

A. Yes, sir.

Q. Now, were they true, and are they true—those answers?

A. No, they are not true, not all of them.

Q. Now, the next question: "It is not what they agreed to do; what did Dwyer say to you? State the agreement—state what was said." "Answer. I was

(Testimony of Hiram F. Lewis.)

to go up and take up a claim and then when it was turned over to them why I was to receive \$150.00 for my right.” [809—479] “Question. With whom did you have that understanding?” “Answer. I think it was Mr. Dwyer.” Was that question asked you at the trial of Mr. Dwyer I have referred to, and were those answers made by you at that time?

A. Yes, sir.

Q. And were they true? A. No, sir.

Q. Did you swear falsely in them intentionally?

A. No, sir.

Q. What was the matter with you that you didn’t tell the truth then?

A. Well, like I have told you here before: I was intimidated all the way through.

Q. You were intimidated? A. Yes, sir.

Q. How old are you, Mr. Lewis?

A. 37—38 now.

Q. And have you lived in Idaho all these years?

A. No, sir.

Q. Where did you come from? A. Minnesota.

Q. Minnesota? A. Yes, sir.

Q. You have been in Idaho how many years?

A. About eight years—a little over—nine.

Q. And you are an educated man?

A. Yes, sir.

Q. And, as I understand, a civil engineer?

A. Yes, sir. I am not a graduate engineer.

Q. And you were threatened?

A. Well, they had me in the sweat-box up there,

(Testimony of Hiram F. Lewis.)

and told me what they would do with me. [810—480]

Q. Now, I have heard a great deal about that sweat-box, and would like to know what you mean by that.

A. Mr. Ruick, as I say, if I would tell anything that suited his side of the case it was all right, and when I didn't he would say to cut it out.

Q. Well, he didn't say that in these trials in court, did he?

A. No; but he took them down at that time when I was in the sweat-box, and then they used it right along through.

Q. And you felt that you had to say that you had an agreement to sell your right for \$150.00 because you were threatened; is that right?

A. I never agreed to sell it for \$150.00.

Q. No—I say, you said it then?

A. Well, yes, the question is there; but I never agreed to it.

Q. Did you tell them that, as I understand?

A. Mr. Ruick, yes.

Q. And you told it twice in court?

A. No, I never told them that; I never told anybody.

Q. You testified to it in court twice, didn't you?

A. I never knew it was down there at \$150.00. I never agreed to sell at that.

Q. Well, what was the price you agreed to sell it for?

(Testimony of Hiram F. Lewis.)

A. Well, after about two years I sold it and made about \$200.00 out of it. I paid taxes on it for two years.

Q. Following along, reading from the same case, I will ask you if this question was asked and this answer made: "Mr. Lewis, kindly avoid using 'I think' when you are perfectly clear, and save me from repeating the question—asking it over again. Did you receive this \$150.00 pursuant to this agreement?" "Answer. Yes, sir." "Question. From whom?" "Answer. From Mr. Kester, is my memory." Do you remember those questions being asked you and those answers made by you?

A. I don't remember as I ever received \$150.00 from Kester.

Q. Well, now, let me ask you, do you remember those questions [811—481] being asked you, and those answers being made at that time?

A. Yes, sir.

Q. And were they true? A. No, sir.

Q. And how much did you receive from Mr. Kester? A. Altogether?

Q. With reference to this claim? A. \$250.00.

Q. \$250.00? A. Yes, sir.

Q. Do you remember before you filed your sworn statement, or the first paper you filed in the land office, of discussing with Mr. Dwyer the propriety of making such a statement? A. No, sir, I don't.

Q. You don't know whether you did or not?

A. No, sir.

(Testimony of Hiram F. Lewis.)

Q. Do you remember whether you and Mr. Dwyer, before you filed your sworn statement, discussed whether or not you should swear that you were taking it up for your own use, and not for the use or benefit of anybody else?

A. I don't remember that he suggested anything of the kind.

Q. Are you sure he didn't? A. Yes, sir.

Q. Now, did you visit the timber claim which you afterwards made application to enter?

A. Yes, sir.

Q. With whom? A. Mr. Dwyer.

Q. And then you came down and filed?

A. Yes, sir.

Q. I will ask you this, reading from the same case at page 284: "Now, between the time that you made this agreement with Dwyer which [812—482] you have testified to and the time that you filed this sworn statement in the land office did you visit the timber?" "Answer. Yes, sir." "Question. In whose company?" "Answer. Mr. Dwyer's." "Question. Anyone else?" "Answer. Well, I think Mr. Bliss went up there, but he didn't go into the land; that is, at that time." Do you remember those questions being asked, and those answers being made by you?

A. Yes, sir.

Q. Now, the next question: "When, if at all, before you filed this written sworn statement that has been shown you, did you and Mr. Dwyer discuss the requirements of this statement—things that you would have to state in the land office?" "Answer.

(Testimony of Hiram F. Lewis.)

I think we did, yes, sir.” “Question. Where was this discussion had?” “Answer. On the streets in Lewiston.” Do you remember those questions being asked, and that answer being made by you?

A. Please read that last again.

The stenographer repeated the last question.

A. I think I do.

Q. Now, do you remember whether or not Mr. Dwyer went over the statement that you had to swear to when you filed your sworn statement, as to what you should say when you swore that you were taking up the land for your own use and benefit? Do you remember discussing that with him?

A. No, sir, I don't.

Q. Reading from the same case at page 285, I will ask you if the question which I shall read to you was asked, and whether the answer which I will also read was made by you: “Well, now, I will ask you this question, to refresh your recollection: Didn't you read over this statement in the land office before you answered it, or before you filed it?” “Answer. Yes, sir.” “Question. Did you observe this statement in here speaks that ‘I didn't apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit?’ Did you notice that?” “Answer. Yes, sir.”

[813—483] Now, do you remember those questions being asked you, and those answers being made by you? A. That I read over the statement?

Q. No, but the whole question that I have been reading to you, and the answer. A. Yes, sir.

(Testimony of Hiram F. Lewis.)

Q. Those questions were asked at this trial that I referred to? A. Yes, sir.

Q. And the answer that I have read made?

A. Yes, sir.

Q. By you? A. I think so.

Q. Were they true? Were the answers made, true? A. I think they were.

Q. Now, this question: I will ask you if this question was asked you, and whether you made the answer that I shall read: "And you swore to that, didn't you?" "Answer. Yes, sir." "Question. Was that statement when you made it true or false?" "Answer. It was false." Do you remember those questions being asked you, and those answers made by you?

A. No, sir, I don't recall it just now that way.

Q. Will you say they were not asked you?

A. No, sir, I don't believe they was.

Q. You have no recollection of it?

A. No, sir, I don't remember now the question being read that way.

Q. Well, was the statement made, that you were entering it in good faith, for your own exclusive use and benefit, true or false?

A. Well, I made it for my own benefit.

Q. Well, I asked you whether the statement that nobody else had any interest in it, I will ask you whether that was true or false?

A. No, sir, nobody else had any interest in it.

Q. Well, then, if you made this statement that I have read to [814—484] you in the trial of Mr.

(Testimony of Hiram F. Lewis.)

Dwyer, you didn't tell the truth; is that correct?

A. I made it for my own benefit and took the claim for my own benefit; I didn't take it for anybody else.

Q. That is not the question. The question is, was this question asked you, and was the answer which I shall read made by you: "Did you observe this statement in here speaks (referring to your sworn statement) that 'I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit?' Did you notice that statement?" "Answer. Yes, sir." "Question. And you swore to that, didn't you?" "Answer. Yes, sir." "Question. And was that statement when you made it true or false?" "Answer. It was false." I ask you again were those questions asked you, and were those answers made by you? A. Yes, sir.

Q. Did you tell the truth at that time when you testified at the trial of Mr. Dwyer concerning that matter that I have referred to just now?

A. I answer this just like I did the others: I had to answer them just like they wanted me to.

The SPECIAL EXAMINER.—Well, the question is whether you told the truth or not. You can answer that, I think, by yes or no.

WITNESS.—Yes, sir, I think I did.

Mr. GORDON.—Q. The next question, I will ask you whether this question was asked you at the trial referred to, and was the answer which I shall read made by you: "Question. And this other statement, 'that I have not, directly or indirectly, made any

(Testimony of Hiram F. Lewis.)

agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself,' you remember of having read that statement?" "Answer. Yes, sir." "Question. [815—485] Now, that statement was not true, was it, at the time that you swore to it?" "Answer. No, sir." "Question. You knew at the time that it wasn't true?" "Answer. Yes, sir." Do you remember those questions being asked you, and those answers made by you?

A. I do.

Q. And did you tell the truth when you made those answers? A. No, sir.

Q. Did you deliberately tell an untruth?

A. Well, no, sir. That was just because they told me that I had to do it that way.

Q. Now, tell us about this. Who told you that you had to? A. N. M. Ruick.

Q. N. M. Ruick? A. Yes, sir.

Q. Did anybody else tell you that you had to?

A. Well, Miles Johnson.

Q. Well, were they together when they told you that? A. Yes, sir.

Q. Was Mr. Goodwin present when they told you that? A. No, sir, I don't believe he was.

Q. Was Mr. O'Fallon?

A. No, sir, I don't believe Mr. O'Fallon was present at the time.

Q. Now, when did they tell you that?

(Testimony of Hiram F. Lewis.)

A. Well, two or three different times.

Q. Well, now, state the date or the occasion?

A. Well, at Moscow,—I don't remember the date exactly—twice in Moscow and once down here in Johnson's office.

Q. And was that before this trial?

A. Yes, sir, one time before that trial.

Q. And were you indicted? A. No, sir.

Q. And what did they tell you they would do to you if you did [316—486] tell an untruth?

A. Well, they told me they would indict me, and also impeach me, too.

Q. And you then went there and swore falsely to keep from being impeached and indicted; is that correct? A. Yes, sir.

Q. And after the first trial—or the trial at Moscow of Mr. Dwyer, in 1906, did you testify at the trial of Mr. Robnett? A. No, sir.

Q. Now, was any other conversation or threat made to you by either Mr. Ruick or Mr. Johnson, or anyone else, between then and the spring of 1907, when you testified at Moscow at the trial against Kester, Kettenbach and Dwyer, for conspiracy?

A. 1906, wasn't it?

Mr. GORDON.—No; it was the spring of 1907. (To Mr. Tannahill.) Is that right?

Mr. TANNAHILL.—Yes; May, 1907, is when Kester, Kettenbach and Dwyer were tried. Robnett was tried in the fall of 1906.

Mr. GORDON.—Q. Now, I will ask you if you remember being at the trial, as a witness on behalf of the Government, in the case of the United States vs.

(Testimony of Hiram F. Lewis.)

Kester, Kettenbach and Dwyer, charged with conspiracy, in the spring—May and June—of 1907?

A. Yes, sir, I was there.

Q. Were you in the sweat-box again?

A. Yes, sir.

Q. And did they have to threaten you again?

A. Well, they did every time I was in the sweat-box at Moscow.

Q. You tried to back out of your former statements each time, did you?

A. No, sir, I didn't try to back out of anything, but when I would tell them things that didn't suit him they would threaten me. [817—487]

Q. Do you mean when you told things that were not true that they told you if you didn't tell the truth that they would indict you?

A. Mr. Ruick said he knew I was holding back certain evidence that I wouldn't tell them, and if I didn't come out and tell them that he would impeach me.

Q. Did he say he would impeach you?

A. Yes, sir.

Q. That was his expression? A. I think it was.

Q. And was Mr. Johnson present at this second conversation?

A. I don't know whether Mr. Johnson was there or not.

Q. Well, I am asking you.

A. I couldn't tell you positively whether he was or not.

Q. And he told you at that time that he would impeach you? A. Yes, sir.

(Testimony of Hiram F. Lewis.)

Q. And then you went into court the second time and made similar statements to those that you made at the trial of Dwyer, when he was tried the preceding fall? A. Yes, sir.

Q. And you knew you were not telling the truth when you made those statements? A. Yes, sir.

Q. Now, in 1905, when you made this affidavit for Mr. Goodwin, did he also threaten you?

A. No, sir, I don't think he did.

Q. And did you tell the truth in that affidavit, as reported here?

A. I don't think I ever read that affidavit all over.

Q. Was it handed to you to read?

A. I think it was, but I didn't read it all at the time. I know I didn't now.

Q. Now, how is it that you will have us to understand that [818—488] three different times, going over a period of two years and a half, that you made statements in court and out of court that we have referred to in this affidavit, because you were threatened that if you didn't come out and tell what you knew about these things you would be indicted?

A. Yes, sir.

Q. Did they ask you to tell anything that wasn't true?

A. Why, no, sir, I don't know as they did. They thought I was holding back certain evidence, that I wouldn't tell it.

Q. Yes, and they told you that if you didn't tell all that you knew about it, that they would indict you; is that it?

(Testimony of Hiram F. Lewis.)

A. Yes; and when there was other things I had told him he would say, "We don't want that, and we will have that cut out."

Q. But they didn't say that to you in court, did they? A. No, sir.

Q. And it was some irrelevant matters or matters that didn't pertain to it that they cut out?

A. Well, there were certain things that they had in there that I told them that every time it was different I was threatened.

Q. Now, why is it that you have so much courage now that you can make these statements that you make here? Are you afraid of being indicted now if you don't tell the truth?

A. I don't know whether I am or not.

Q. I ask you, are you exercised over the fact now that you might be indicted if you don't tell the truth?

A. Well, I always figure on telling the truth.

Q. Did you tell the truth then, when you testified at Moscow?

Mr. TANNAHILL.—Oh, we object to that as a repetition. That has been gone over seven or eight different times.

Mr. GORDON.—Q. Well, what were you figuring on doing then? A. When? [819—489]

Q. At both trials at Moscow that you have referred to?

A. Well, I supposed I had to do just as they wanted me to.

Q. Now, you were cross-examined by counsel for these defendants in both of those trials, weren't you?

(Testimony of Hiram F. Lewis.)

A. I couldn't tell. I guess I was, though.

Q. And you reiterated the same statements, didn't you? A. Part of them, I guess.

Q. Now, you obtained a relinquishment from Mr. Dwyer before entering this claim? A. Yes, sir.

Q. And it was turned over to you, and you filed at the land office at the time you made your application to enter the land? A. Yes, sir.

Q. And did you pay anything for that relinquishment? A. Yes, sir.

Q. How much? A. \$50.00.

Q. Fifty dollars? A. Yes, sir.

Q. Did you pay any location fee? A. Yes, sir.

Q. To whom? A. Mr. Dwyer.

Q. When did you pay that?

A. After I took the claim.

Q. How long after you took the claim?

A. I should judge about three weeks, I think.

Q. When did you pay the \$50.00 that you have referred to? A. That was before I filed.

Q. Now, who paid your filing fees at the land office? A. I paid them myself.

Q. And who paid your expenses up to view the timber? [820—490] A. I did.

Q. How long after you viewed this timber did you locate or did you file your application?

A. Well, I think it was three or four days after I came back; something like that; I don't remember just the date.

Q. You made your filing—you filed your sworn statement and your other entry papers on the 29th of

(Testimony of Hiram F. Lewis.)

August, 1904, to the northwest quarter of section 20, in township 38 north, of range 5 east, Boise meridian; is that correct, Mr. Lewis?

A. Yes, sir, I think so.

Q. Now, had you any arrangement with anyone by which you got money to make your final proof?

A. Well, I had money of my own.

Q. How much did you have?

A. About \$300.00 or \$400.00 at that time.

Q. And did you use your own money?

A. Part of it.

Q. How much of your own money did you use?

A. Well, most all of it.

Q. Well, now, tell us how much, if you can?

A. Well, I drew—got some more, and gave my notes for it.

Q. How much did you get?

A. Well, I couldn't tell you just now how much it was.

Q. As near as you can tell.

A. Well, I think at that time about \$200.00, if I am not mistaken.

Q. And from whom did you get that?

A. Mr. Kester.

Q. Mr. George H. Kester? A. Yes, sir.

Q. And who made the arrangements for you to get it? A. I made them myself. [821—491]

Q. And when did you make them?

A. Well, I don't remember the date; it was that fall, though. I went to Mr. Kester and told him I didn't have money enough to prove up on that claim,

(Testimony of Hiram F. Lewis.)

and I asked him if I could borrow some money of him, and I gave him notes for it.

Q. Was Mr. Dwyer with you at that time?

A. No, sir.

Q. Was Mr. Dwyer with you at any time when you were talking about this timber claim?

A. Yes, sir.

Q. Sir? A. Yes, sir.

Q. When?

A. The first time that he talked with me about it?

Q. Well, the first conversation with him in regard to taking the claim.

A. He wasn't with me when I went to borrow any money.

Q. Well, I mean was Kester and Dwyer with you together the first time you talked about taking up a claim? A. No, sir.

Q. Now, when were Kester and Dwyer together when you talked about this claim?

A. Well, I don't recall just when that was. I think I met the two on the street one day and talked about it.

Q. And when was that?

A. Well, that fall, I think after I took the claim; probably October some time.

Q. Now, you have referred to "they." Who did you mean by "they?"

A. Mr. Kester and Mr. Dwyer.

Q. Now, again taking up this affidavit that you have identified as having been sworn to by you, or a number of questions and answers that have been identified as having been sworn to by you, which you

(Testimony of Hiram F. Lewis.)

have [822—492] read over since you have been on the witness chair, have you not?

A. Yes, sir, I have read them over.

Q. I will ask you if this question was asked, and the answer which I shall read made by you: "In other words, they told you that if you would go up and file on that timber claim and transfer it to them, they would give you \$150.00 for it?" "Answer. Yes, sir." I will ask you if you remember, first whether that question was asked you by Mr. O'Fallon, and next whether or not you remember making that answer.

A. I never made no answer to \$150.00.

Q. Now, I will ask you if you remember that question being asked and whether or not you made that answer. A. I think it was.

Q. And did you make that answer?

A. I think so at that time, yes, sir.

Q. And the next question: "And they would advance the money and pay all the expenses?" "Answer. Yes, sir." Was the question asked, and was that answer made by you? A. No, sir.

Q. I will ask you if you remember that question being asked, and whether that answer was made by you? A. I don't remember it now.

Q. You don't remember it now? A. No.

Q. You won't say that question wasn't asked and that answer wasn't made, will you?

A. Well, not positively.

Q. Now, who are the "they" referred to in there?

A. Mr. Kester and Mr. Dwyer.

(Testimony of Hiram F. Lewis.)

Q. That is, William Dwyer and George H. Kester?

A. Yes, sir.

Q. I shall read the next question: "Question. Go on and state [823—493] what you did when you came back?" "Answer. I think I told you that I filed on the claim." "Question. Who paid the land office fees?" "Answer. I paid them myself. I paid all my witness fees from this money, you know." "Question. They let you have the money for that purpose?" "Answer. Yes, sir. I got the money on a note, and deposited it in the Idaho Trust Company and drew on it for expenses." Do you remember whether those questions were asked you and those answers made by you?

A. Yes, sir. I just told you I borrowed money on a note. I borrowed it from the Idaho Trust Company. That's what it did.

Q. Now, that was before you filed on it?

A. No, it wasn't.

Q. Now, let's see if we can get this right: "Question. Go on and state what you did when you came back." That is, after you had been up to view the land. "Answer. I think I told you that I filed on the claim." "Question. Who paid the land office fees?" "Answer. I paid them myself. I paid all my witness fees from this money, you know." "Question. They let you have the money for that purpose?" "Answer. Yes, sir. I got the money on a note and deposited it in the Idaho Trust Company and drew on that for expenses." Now, were those questions asked you, and those answers made

(Testimony of Hiram F. Lewis.)

by you? A. Well, as I have just stated,—

Q. Answer my question, and then you can explain.

The SPECIAL EXAMINER.—Yes, answer the question, and then you can explain if you want to.

WITNESS.—No, sir.

Mr. GORDON.—Q. You say those questions were not asked you, and those answers were not made by you? A. No, sir, I don't remember them now.

Q. Well, is it a fact that they did give you the money, or loan you the money, to pay your filing fees and your expenses? [824—494] A. No, sir.

Q. That is not the truth, then? A. No, sir.

Q. That is not a fact? A. No, sir.

Q. You have a brother, have you not?

A. Yes, sir.

Q. What is his name? A. Edward M. Lewis.

Q. And I will ask you whether or not Mr. Dwyer at the same time he talked with you about taking up a claim asked if he could get your brother to take up a claim?

A. No, sir; it was subsequent—after I took up my claim.

Q. Then, did he ask you if you could get your brother to take up a claim?

A. He asked me if I had a brother, and said he had a claim up there and he could get one.

Q. Was that also a relinquishment?

A. Yes, sir.

Q. And did you get your brother to file on the claim? A. Yes, sir.

Q. Mr. Lewis, did you discuss with Mr. Dwyer,

(Testimony of Hiram F. Lewis.)

prior to making final proof, the questions that would be asked you in the land office?

Mr. TANNAHILL.—I object to that as irrelevant and immaterial.

WITNESS.—No, sir, I don't know that I did.

Mr. GORDON.—Q. Did he discuss them with you?

A. No, sir, I don't remember that he did.

Q. Do you remember whether that matter—those questions,—were asked you by Mr. Goodwin when he was taking your statement?

A. I think I had a copy of the papers and read them over before I made my final proof. [825—495]

Q. Who gave them to you?

A. I think Mr. Dwyer did, if I am not mistaken.

Q. Where did he give them to you?

A. In the Lewiston National Bank, or upstairs, I think it was, in Dwyer's office.

Q. Did he have an office in the Lewiston National Bank building? A. Yes, sir.

Q. Do you remember that in that conference or inquiry that was being made by Mr. Goodwin of you, and the paper which you have identified here, whether this question was asked you, and whether or not you made the answer which I shall read: "Mr. Lewis, did you have a talk with Mr. Dwyer or anyone else in reference to the questions that would be asked you in the land office before you proved up?" "Answer. No. I don't believe that they questioned me at all, Mr. Johnson." "Question. In question No. 13, with regard to whether or not you had any agreement or contract of any kind, direct or indirect,

(Testimony of Hiram F. Lewis.)

with anybody, who is the man who suggested that you answer the question no?" "Answer. Mr. Dwyer did." Do you remember that question being asked, and that answer being made by you?

A. No, sir, I don't.

Q. Now, it seems that Mr. Johnson was present at the time when Mr. O'Fallon was taking this statement; is that correct?

A. Well, I had forgotten. I know Mr. Johnson was there most of the time; but I had forgotten whether Mr. Johnson was there all the time.

Q. Do you remember whether or not, at the time you made proof, you had given a note for this money that you had received from Mr. Kester to make your proof? A. Yes, sir, I think I had.

Q. Are you sure that you did? A. Yes, sir.
[826—496]

Q. See if this refreshes your memory: Again reading from this sworn statement that you have identified here, before Mr. Goodwin: "And Dwyer advised you to say when they came to that question (that you have just referred to before)?" "Answer. He told me like this, 'that money is your own money, and those questions you want to answer them no.' "

"Question. You hadn't given the note at that time?" "Answer. No, sir." Were those questions asked you, and were those answers made by you at that time? A. I think they were.

Q. "Question. At the time you made final proof you hadn't given the note?" "Answer. No; I think the note was given subsequent to that." Does

(Testimony of Hiram F. Lewis.)

that refresh your recollection at all?

A. I gave two notes, but I gave one before and one after.

Q. The next question "You didn't sign anything at all but the note?" "Answer. No, sir, nothing but the note. I had no contract or anything of that kind." "Question. What did they say? That they could trust you to carry out the proposition, and it wasn't necessary to have a mortgage or deed?"

"Answer. Yes, sir." "Question. Wasn't there something said to you that Mr. O'Fallon was in town at that time making an investigation, and it would be much better not to have any transfer until after this matter had blown over?" "Answer. I think, if I mistake not, it was Mr. Kester who said, 'We will just let this matter stand until some future time.' One idea he had suggested to me one day (which I never carried out) was that I go before a lawyer and have my brother's claim transferred to him." "Question. George H. Kester told you that?" "Answer. I think it was George H. Kester told me that." Do you remember those questions being asked, and those answers being made by you?

A. No, sir.

Q. Well, is it a fact as those answers would indicate?

A. I don't remember of any such conversation.

Q. Well, I ask you, was there a conversation at that time? [827—497]

A. Not to that effect, that I know of, no, sir.

Q. You say that there wasn't a conversation to

(Testimony of Hiram F. Lewis.)

that effect? A. Yes, sir.

Q. And that you didn't make the statements that you are reported to have made here? A. Yes, sir.

Q. Do you remember this question being asked you: "Did you have a talk with Kettenbach in reference to it?" "Answer. I don't think I did in regard to this transaction. I don't think I had anything to do with Kettenbach at all. It was generally through Dwyer and Kester." Do you remember those questions being asked? A. Yes, sir.

Q. And that answer made? A. I think I do.

Q. Do you remember this question being asked you: I am still reading from the same affidavit, or questions and answers which you have identified as having been signed and sworn to by you. "Now, Mr. Lewis, they also had you go around and see some other people to get them to file for \$150.00, didn't they?" "Answer. Mr. Dwyer suggested to me that if I knew anybody who wanted to take up a claim on that same arrangement, to send them around." "Question. And George H. Kester also had a talk with you on the same line?" "Answer. No, I don't think Mr. Kester did; it was Mr. Dwyer." Were those questions asked you, and that answer made by you? A. I think it was.

Q. That was true, was it?

A. I think so. I never got anybody to take claims, though, on that proposition.

Q. Wouldn't they come through?

A. Well, I never tried, I guess.

Q. The next question: "And you had an under-

(Testimony of Hiram F. Lewis.)

standing with Kester that this claim that you were taking up for him, you were to [828—498] receive \$150.00 and he was to have it?" "Answer. Yes, sir, at some future time. There was never any contract, or anything of that kind." "Question. You didn't have a written agreement or contract, I know, but you had a verbal understanding?" "Answer. Yes, sir." "Question. Did you and your brother receive your \$150.00?" "Answer. Yes, sir." Do you remember those questions being asked and those answers being made? A. No, sir.

Q. Would you say they were not asked, or don't you remember?

A. I don't remember them particularly.

Q. Your brother took up a claim, and do you remember whether or not there was a contest filed?

A. Yes, sir.

Q. And who paid the expense of that contest?

A. I did.

Q. And who reimbursed you for it?

A. Nobody.

Q. Are you sure of that? A. Yes, sir.

Q. In this same affidavit I have been reading to you, "I will ask you this, have you ever paid any interest on this note of yours which is now in the bank?"

A. I beg pardon, there was something; I remember that.

Q. Now, who reimbursed you for that?

A. Mr. Dwyer.

Q. Mr. Dwyer or Mr. Kester?

(Testimony of Hiram F. Lewis.)

A. I think it was Mr. Dwyer.

Q. See if this refreshes your memory: "Have you ever paid any interest on this note of yours which is now in the bank?" "Answer. Why, while I was away there was a contest on my brother's claim, and he went down and paid out \$30.00 out of his own pocket." "Question. At the land office?" "Answer. At the land office, on this contest, and [829—499] when I came back home Mr. Dwyer met me and told me that that money would be refunded, and that he would get it for me, and he stepped into the bank and I stopped to talk with somebody and then followed him in, in a few minutes, and Mr. Kester or Mr. Dwyer, I wouldn't say which, said that they would endorse this on the note as interest, which was done." "Question. By whom was that done?" "Answer. Mr. Kester endorsed it." Is that correct?

A. Yes, I think that's right.

Q. Then, Dwyer paid you the \$30.00 interest, is that right? You don't know whether it was Kester paid it or Dwyer paid it?

A. It was Kester.

Mr. GORDON.—Mr. Tannahill, this affidavit that there was such a to-do about the witness being allowed to see, I will turn it over to you to read. (Handing same to Mr. Tannahill.)

Q. Reading again from case No. 1605, heretofore referred to, at page 473, I will ask you whether or not the questions which I shall read were asked you, and whether you answered them, and see if they re-

(Testimony of Hiram F. Lewis.)

fresh your recollection to any extent: "Did you have a conversation prior to your filing your application at which any of the other defendants were present besides Dwyer?" "Answer. Why, Mr. Kester was with Mr. Dwyer one time, but I wouldn't say positively which time it was, whether it was the first or the second time that I met him." Do you remember whether or not that is the fact?

A. I think it was.

Q. That was before you filed, however?

A. Well, I couldn't tell positive whether it was before or afterwards.

Q. Now, see if this refreshes your recollection: Continuing on the same page, relating to the same occasion: "Question. Well, you may go ahead and state where you met him." "Answer. I think I was coming down town at the time from home and I met them; they were in a buggy, Mr. Dwyer and Mr. Kester." "Question. What conversation, if [830—500] any, did you have there, relative to your proposed timber filing?" "Answer. They wanted to know when I could go up, and I told them almost any time they would set a date. Mr. Dwyer said he would go up with me, and we did. We took the train to Lenoir, and then got horses and went out and saw the timber claim and came back to Lewiston." Do you remember those questions being asked at the trial I have referred to, and those answers being made by you?

A. I think they were.

Q. Continuing on page 474 of the same trial, I will

(Testimony of Hiram F. Lewis.)

ask you whether or not this question was asked you, and the answer which I shall read made by you: "Had there been any understanding between you and the defendant Dwyer, or Dwyer and the other defendants, or either of them, prior to your going up to this timber, as to the disposition you were to make of this claim when you should procure the title to it? Answer the question yes or no." "Answer. Yes." "Question. State what your understanding and agreement was, when and where it was made, and how? State everything in relation to it." "Answer. Well, I told them—they wanted, Mr. Dwyer wanted to know if I had any money of my own, and I told him I had. He wanted to know where it was. I told him it was in the Idaho Trust Company's Bank, and he said, as I stated, that I could take up a claim and they would pay all the expenses and they would furnish the balance of the money for me. I was to give my note for it, and would pay all of the expenses out of the money; that is, when I drew checks on it, on the Idaho Trust Company, for expenses. They procured the money from the Lewiston National Bank, and I gave my note for it, as I say, and deposited it in the Idaho Trust Company." Do you remember those questions being asked, and those answers made by you?

A. Yes, sir. But they didn't procure it; I procured the money myself.

Q. You procured it from the Lewiston National Bank? A. Yes, sir. [831—501]

Q. Through whom did you conduct the transac-

(Testimony of Hiram F. Lewis.)

tion? A. Mr. Kester.

Q. Well, then, there is no practical difference between the statement that you make now and the one that I have read to you?

A. No; no practical difference. It says "they" there, and Mr. Dwyer wasn't present at the time.

Q. Mr. Dwyer was present when you had the talk with Kester about getting the money, though, wasn't he? A. No, I don't think he was.

Q. I will ask you whether this question was asked you in the same connection, on page 475: "What I asked you in particular—you anticipate a little, Mr. Lewis, what I want to know particularly is the terms of the agreement; in other words, what was said in the conversation between you and Dwyer, start in at the first conversation and go through and then go on with the later conversation you had with him before going to the timber with him, or with him and Kester." "Answer. He told me what they would give me for the claim, allow me for my right, and they would furnish all money and pay all expenses, and I was to deposit the money in the Idaho Trust Company and draw upon it to defray all the necessary expenses, and all expenses on account of that filing and proving up on the claim." Now, do you remember whether or not those questions were asked you, and those answers made by you?

A. Well, they didn't furnish all the money.

Q. Now, answer my question, and then you can go into that later. A. No, sir.

Q. Do you remember that question being asked,

(Testimony of Hiram F. Lewis.)

and that answer being made by you?

A. No, sir, not just that way.

Q. You wouldn't say that you did not make that answer in response to that question, would you, Mr. Lewis?

A. Well, if I did I didn't understand the question.

Q. You understand it now, do you? [832—502]

A. Yes, sir.

Q. Now, what was the reason you didn't understand it then?

A. In regard to getting the money, because I had part of the money myself.

Q. Now, you understand, Mr. Lewis,—let me explain to you that I am reading from the record of the trial of Kester and Kettenbach and the trial of Dwyer, in which you were a witness, and this record that I read from was the record that was gotten up by counsel for these defendants after they were convicted, to take the case up on appeal, and I want you to be careful as to how you answer these questions. If you don't remember them, say so; but if you have no recollection of it don't say that the answers and questions were not asked you and the answers made by you. And so what is your answer now as to whether or not that question that I read last was asked you, and whether you made the answer that you are reported to have made? A. I think I did.

Q. Now, you say you didn't understand it?

A. No, sir.

(Testimony of Hiram F. Lewis.)

Q. What was there about it you didn't understand?

A. There was no prior agreement, no arrangement made for it, as I had part of the money myself in the Idaho Trust Company.

Q. And they were to furnish the balance?—you can put it either way—to furnish, or loan it, or give it to you. I don't want to haggle on a word.

A. I went to them and asked them if I could get the balance of the money there, and they said I could.

Q. Wasn't that arrangement made before you went up to see the claim? A. No, sir, I think not.

Q. Haven't you said so in two or three places in these various trials?

A. I don't think I have. [833—503]

Q. I am reading from the same record: "Question. At which of these conversations or at what conversation was Mr. Kester present, or have you already testified?" "Answer. I think it was the second time that I met them. "Question. Yes, what arrangement, if any, was made that time when you met, when he and Dwyer were together?" "Answer. That was the time I was to go upon the claim when I met Mr. Kester with him." Do you remember those questions being asked you, and those answers being made by you? A. I think I do.

Q. And that is correct, is it?

A. Yes, sir. I won't state positive whether it was before I met on the claim, or after.

Q. I read the next question: "Question. Who was present when the arrangement was made and

(Testimony of Hiram F. Lewis.)

you were to procure the money, when the arrangement by which you were to procure the money was made and agreed upon?" "Answer. Mr. Dwyer."

"Question. Who?" "Answer. Mr. Dwyer and Mr. Kester were together." "Question. What?"

"Answer. Mr. Dwyer and Mr. Kester." "Question. Were together?" "Answer. Yes, sir."

"Question. At the time the money matters were talked over?" "Answer. Yes, sir." Now, do you remember whether those questions were asked you, and those answers were made by you?

A. I don't remember whether they was or not.

Q. You wouldn't say they were not, though?

A. No, sir.

Q. Reading from the same record at page 476:

"Question. You went up, did you, to the timber?"

"Answer. Yes, sir." "Question. Who went with you?" "Answer Mr. Dwyer."

"Question. How did you travel, how did you go?" "Answer. We

went on the cars to Lenore and then procured horses

and went on the timber claim on horses and came

back to Lenore and then took the cars back to Lewiston."

"Question. Where is Lenore? What line of railroad? On the Clearwater Branch?" "An-

swer. Yes, sir; on the Clearwater Branch." "Ques-

tion. How far [834—504] did you have to travel on horses?" "Answer. It took us two days to get

into the timber and back from there." "Question.

Who paid the expenses of that trip?" "Answer.

Mr. Dwyer." "Question. Did he give you the

money or did he pay it out of his own pocket?"

(Testimony of Hiram F. Lewis.)

“Answer. He paid it out of his own pocket.”

“Question. You say you were gone two days from Lewiston?”

“Answer. Three days—no, four days from Lewiston; it took four days, one day out and one day we took the horses after we left the train and was gone two days and come back and we had to wait for the train,” etc. I will ask you if you remember those questions being asked you, and those answers made by you, at the trial of Mr. Kester, Mr. Kettenbach and Mr. Dwyer, in the spring of 1907?

A. Yes, sir. I don't remember just when it was.

Q. Well, you remember those questions and answers being asked and given? A. Yes, sir. [835—505]

Mr. GORDON.—Q. Mr. Lewis, did you form a part of or among the number of persons in front of the land office in the line-up? A. Yes, sir.

Q. How long was it after you made your visit to view this land that you filed at the land office?

A. I think three or four days, something like that.

Q. Do you remember whether it was three or four days, or about two weeks?

A. Well, I couldn't tell now. Possibly—

Q. You have forgotten? A. Yes, sir:

Q. Who prepared your filing papers for you?

A. I. N. Smith.

Q. Who told you to go to see him? A. Nobody.

Q. Do you remember whether this question was asked you at the trial of Kester and Kettenbach, No. 1605, from which I have been reading: “How did you happen to go to I. N. Smith's office?” “Answer.

(Testimony of Hiram F. Lewis.)

I asked Mr. Dwyer where we could have them made out and he suggested that I go there and have them made out.” A. I don’t remember.

Q. Does that refresh your recollection at all?

A. He might have suggested that, but I don’t remember just now.

Q. Do you remember whether Mr. Dwyer gave you the blank to take to Mr. Smith’s office?

A. No, sir; I do not.

Q. Did you pay Mr. Smith for making out those papers? A. Yes, sir.

Q. How much?

A. I forget now; I think it was \$6.00; if I remember, I think it was \$6.00.

Q. And you paid your filing fees yourself? [836—506] A. Yes, sir.

Q. And you drew the money from the Idaho Trust Company for that purpose? A. Yes, sir.

Q. And had you previously made your loan at the Lewiston National Bank and deposited it in the Idaho trust? A. Yes, sir; part of it.

Q. Well, I mean the part you have referred to all along as having borrowed from the bank through Mr. Kester. A. Yes, sir.

Q. That had already been deposited in the Idaho Trust Company when you made this filing that I have referred to? A. Yes, sir.

Q. Do you remember whether or not this question was asked you at the trial I have been referring to, page 479: “For what purpose did you get the money, if you remember?” “Answer. For filing purposes

(Testimony of Hiram F. Lewis.)

and the expenses of the claim.” “Question. Did you give any note or other obligation for it?” “Answer. Yes, sir.” “Question. How long before you filed your application was it you put this money in the bank of the Idaho Trust Company?” “Answer. Two weeks, I think, or something like that.” “Question. I am speaking of your original application, you understand, not the final proof?” “Answer. Yes, sir.” “Question. You understand this was before your first papers?” “Answer. Yes, sir.” Do you remember those questions being asked you and those answers made by you?

A. No, sir; I do not.

Q. Do you remember whether or not that is the fact?

A. I think it was later; I am pretty sure it was, that I borrowed the money, or just previous to making final proof. I didn't borrow any before I filed on the claim.

Q. I understood you to say just one minute before that you had, and that when you filed your sworn statement, which Mr. I. N. Smith [837—507] prepared for you, you had already gotten the money from the Lewiston National Bank. Is that correct?

A. I had money in the Idaho Trust Company of my own.

Q. I understand that, but hadn't you borrowed the money from the Lewiston National Bank, as you testified a few minutes ago that you had?

A. I don't remember.

Q. You don't remember it? A. No, sir.

(Testimony of Hiram F. Lewis.)

Q. How much money did you have in the Idaho Trust Company at that time?

A. About \$400.00, something like that,—\$300.00 or \$400.00.

Q. That was before you borrowed that money from these people? A. Yes, sir.

Q. Then, you put in how much more?

A. Two hundred, I think.

Q. How long had you had that money in the Idaho Trust, as well as you can remember?

A. I had been carrying an account there about a year, I think, as well as I can remember.

Q. Do you remember these questions being asked you in the trial of Kester, Kettenbach and Dwyer that I have referred to, reported at page 480 of the record: "Question. I am speaking of your original application you understand, not the final proof?" "Answer. Yes, sir." "Question. You understand this was before your first papers?" "Answer. Yes, sir." "Question. You say you took the blank to I. N. Smith's office?" "Answer, Yes, sir." "Question. That Dwyer had given you?" "Answer. Yes, sir." "Question. Did you have a talk with Mr. Dwyer before you went to the land office, before you went to I. N. Smith's office respecting the contents of this application?" "Answer. Yes, sir." "Question. Where did that talk occur?" "Answer. I think it was on the street." "Question. Where had Dwyer given you these blanks?" "Answer. There in the hallway of the bank building on the floor where the land office is." "Question.

(Testimony of Hiram F. Lewis.)

What did Dwyer say [838—508] to you at the time he gave you these blanks?" "Answer. He said to take them in to Smith and have them filled out and then take them to the land office and file them." Do you remember whether or not those questions were asked you and those answers made by you?

A. No, sir; I do not.

Q. You have no recollection of it?

A. I don't remember it that way.

Q. Does that refresh your recollection as to the transaction?

A. He might have done that, but I don't remember whether he did or not.

Q. It wouldn't have been anything very serious if he had, would it, Mr. Lewis?

A. No, sir; but I was thinking that Mr. Smith furnished me the papers.

Q. Do you remember this question being asked you at the trial of Kester and Kettenbach from which I have been reading from the record: "Question. Now, I will call your attention to the statement contained in your application or sworn statement you had filed: 'That I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit.' Did you read this statement over before you signed it and swore to it?" "Answer. Yes, sir." "Question. You knew that was in there?" "Answer. Yes, sir." "Question. Now, when you stated under oath at this time that you did not apply to purchase the land above described on speculation, but in good

(Testimony of Hiram F. Lewis.)

faith to appropriate it to your own exclusive use and benefit, now was that statement when you made it, and so made by you, Mr. Lewis, true or untrue?"

"Answer. Untrue." "Question. Did you know it was untrue at the time you made it?" "Answer. Yes, sir." Do you remember those questions being asked you at that trial and the answers I have read being made by you? A. I think they were.

Q. The next question: "I call your attention to this other statement in the filing immediately following: 'That I have not directly or [339—509] indirectly made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself,' you recall having read that, do you?" "Answer. Yes, sir." "Question. Now, was that statement true or untrue at the time that you made it?" "Answer. Untrue." "Question. Please explain to the jury what led up to your making these false statements at the time they were made, Mr. Lewis?" "Answer. Well, I was told, after I read them over, and swore to them, that there was nothing in there that would be illegal, or out of the way in any manner." "Question. Who told you?" "Answer. Mr. Dwyer." Do you remember those questions being asked you and those answers being made by you?

A. No, sir.

Q. You won't say that they weren't asked you and that you didn't make those answers, will you?

(Testimony of Hiram F. Lewis.)

A. No, sir.

Q. Do you remember these questions being asked you and these answers made by you at the same time: "Question. And when?" "Answer. At the time I got the blank." I am just continuing to read from where I stopped. "Question. What further did Dwyer say about these matters or what if anything did he say about that proposition that you were taking this up for your own benefit?" "Answer. Why, he said there was nothing out of the way, nothing illegal about it, it was being done right along, and if I swore to those papers it would be all right." "Question. Well, how was this to be for your benefit? How did you understand this to be for your benefit?" "Answer. Well, I was to receive \$150.00 for my right." "Question. What I want to know is, whether or not that was your own suggestion, or the suggestion of somebody else, and if so, who suggested it?" "Answer. It was Mr. Dwyer's suggestion." "Question. Now, with regard to the proposition down here [840—510] that you had not made any agreement, directly or indirectly, with any persons, etc., what, if anything, was said about that?" "Answer. Well, I was told that when I had procured this money, I had some of the money, and I borrowed the rest on my own personal note, was a legal transaction and nothing out of the way." "Question. Who told you this?" "Answer. Mr. Dwyer." Do you remember those questions being asked you and those answers made by you at the trial I have referred to? A. I don't remember.

(Testimony of Hiram F. Lewis.)

Q. Were they the facts as they are reported here, that you did have those conversations with Mr. Dwyer? A. I don't remember.

Q. I read from the same record, page 483, and ask you whether or not you remember the questions which I shall read being asked you and the answers which I shall also read being made by you. "Question. You said here, 'That I have not directly or indirectly made any agreement or contract, or in any way or manner, with any person or persons whomsoever,' now you have already testified here as to the understanding which you had before you filed this paper. Now, why did you state under oath here that you had no contract in view of the understanding that you had?" "Answer. Well, as I said before, I supposed it was a legal transaction, and I had a right after I acquired the land in this way to transfer it and it would be a legal transaction." Do you remember that question being asked you and that answer made by you? A. I think I do.

Q. It was correct, was it?

A. I never had no agreement what I was to do with the claim.

Q. Did you testify falsely then when you say you remember making—

A. That part of it.

Q. Did you do it intentionally? A. No, sir.

Q. What is it that makes your recollection clearer on the subject, now, Mr. Lewis, than it was two or three years ago? You have not talked [841—511] this over with anybody? A. No, sir.

(Testimony of Hiram F. Lewis.)

Q. I say what makes your recollection clear, if it is?

A. Well, there is some points of it there, as I say, when you read it over I can understand it a little better.

Q. You didn't understand the questions then? Is that correct?

A. Well, I don't know as I did, and, as I say, I was intimidated before.

Q. You were intimidated? A. Yes, sir.

Q. You are not a very timid man, are you?

A. No, not naturally, but when you have got two or three men behind you that are going to impeach you and indict you or anything like that—

Q. If I were to threaten to indict you if you didn't testify to what I told you to, would that intimidate you much? A. It might.

Q. Would you proceed to testify as I told you to?

A. No, sir.

Q. I continue to read from the same record, and ask you whether or not the questions which I shall read were asked you at the trial to which I have referred, and whether you made the answers which I shall read: "What I want to know, what I want to get at is this: What was said concerning that, if anything, in this conversation with regard to your not having any contract?" "Answer. Why, we didn't have anything only a verbal contract; there was no papers drawn up or anything that way. All the contract I did have was simply by orally and giving my note for the money." Do you remember that ques-

(Testimony of Hiram F. Lewis.)

tion and answer? A. I think I did.

Q. Who procured your witnesses for you, or named your witnesses for you to give to the land office when you made your original filing?

A. I think I suggested one or two myself, and I think Mr. Dwyer [842—512] did.

Q. Do you remember who the witnesses were that Mr. Dwyer suggested?

A. Well, I can only remember two of the witnesses I had now.

Q. Who were they? A. Melvern Scott and—

Q. And Edwin Bliss? A. Bliss, yes.

Q. Now, let me ask you this: It was not clear to your mind before whether you got the money from the Lewiston National Bank before you made your sworn statement or just prior to final proof. Is that correct? A. Yes, sir.

Q. Do you remember whether, just prior to making your final proof, you saw Dwyer and told him that you did not have sufficient money with which to make proof, and that you and he went to the Lewiston National Bank and you got it and deposited it in the Idaho Trust Company, the amount of money?

A. I don't remember of speaking to Mr. Dwyer about it. I might have done so.

Q. And you got the money from Mr. Kester, did you? A. Yes, sir.

Q. Do you remember what amount you gave your note for? A. I do not, at this time.

Q. Wasn't it \$450.00? A. No, sir.

(Testimony of Hiram F. Lewis.)

Q. Why do you say no?

A. Well, I know I gave two or three different notes, and I can't say positively, I don't think I gave it for that amount.

Q. See if this refreshes your recollection. I am reading again from the record of the trial of Kester and Kettenbach to which I have been referring, page 486 of the record: "Did you see Dwyer and have a talk with him before going up to make your final proof?" "Answer. Yes, sir." "Question. Where did you see him?" "Answer. On the street in [843—513] Lewiston." "Question. What was said there or done?" "Answer. He wanted to know if I had everything fixed to prove up when the time came, and I told him I hadn't yet; it was about two weeks before I proved up. He said: 'You better get fixed up and have everything ready then,' and he wanted to know what was the matter, and I told him I didn't have quite money enough, and he said I better get enough so as to be ready, and he wanted to know how much I needed, and I told him, and went to the Lewiston National Bank and got it, and deposited it in the Idaho Trust Company." "Question. Did Dwyer go there with you?" "Answer. No, sir; I don't think he went in the bank with me." "Question. Who did you get the money from, if you remember?" "Answer. Mr. Kester." "Question. Did you give your note for it?" "Answer. Yes, sir." "Question. Do you recall how much you got at that time?" "Answer. Something over four hundred dollars, I think \$450.00, or something like that,

(Testimony of Hiram F. Lewis.)

enough to pay up for the land and the expenses and witness fees and so forth." Does that refresh your recollection, Mr. Lewis?

A. I don't remember just the amount. The rest of it, I think, is all right.

Q. You wouldn't say it wasn't \$450.00, would you?

A. No, sir. It might have been \$550.00; I don't remember now.

Q. All the business in connection with your brother taking up a claim was to be transacted through you, was it not? A. Yes, sir.

Q. And you did transact it? A. Yes, sir.

Q. And you afterwards sold and received the money on the same conditions under which you had taken up your claim?

A. No, sir, I bought his claim.

Q. On whose suggestion did you buy it?

A. My own.

Q. Didn't you buy it on the suggestion of Mr. Kester at the time Mr. O'Fallon was here, that he told you it would look better for you to buy it?

[844—514]

A. I don't remember any such conversation.

Q. Would you say that that conversation didn't take place? A. No, sir, I wouldn't.

Q. Think again and see if you can think if that is the fact. A. Well, I don't remember.

Q. Did you get the money from the Lewiston National Bank for the expenses of your brother taking up a claim? A. Most of it; yes, sir.

(Testimony of Hiram F. Lewis.)

Q. And for his filing fees and everything else?

A. I furnished him some of the money, too.

Q. How much of it did you furnish?

A. \$150.00 I furnished him.

Q. Did you afterwards convey the claim your brother took up to Kester? A. Yes, sir.

Q. At the same time you conveyed your own?

A. I think they was both conveyed at the same time, yes, sir, about two years, about seventeen months I think after. I paid taxes on them two years.

Q. How much were you given for your brother's claim when you settled up? You did the negotiating, didn't you? A. Yes, sir.

Q. You settled, did you? A. Yes, sir.

Q. Who did you settle with? A. Mr. Kester.

Q. How much did he give you for your brother's claim? A. \$150.00.

Q. How much did he give you for yours?

A. I got \$250.00.

Q. Was that extra hundred dollars for your services in getting your brother to locate? [845—515]

A. No, sir, I got nothing for that.

Q. Your brother was not known at all in the transactions in the bank with reference to these claims, was he? A. No, sir.

Q. You attended to all the transactions?

A. Yes, sir.

Q. Did your brother make his proof at the same time you did?

(Testimony of Hiram F. Lewis.)

A. No, sir, I think—I forget now. It was some time after though; I don't know just how long.

Q. Now, do you remember when you went to the land office to make final proof you were asked certain questions as to whether or not you had made any agreement to sell, and so forth, and that you answered no? A. I don't remember now.

Q. Do you remember this question being asked you at the trials that I have heretofore referred to, and I read from the record that I have been reading from, No. 1605, page 491: "Now, you say you recognize these papers as your testimony given in support of your application to purchase this claim. Now, I want to ask you this: I read from question 13 on the blank testimony of claimant: 'Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except yourself?' You remember that question being asked in the land office?" "Answer. Yes, sir." "Question. And you answered that question, no. Was that answer true or untrue at the time you made it?" "Answer. Untrue." "Question. Did you know it to be untrue at the time you made it?" "Answer. Yes, sir." "Question. This other question, number 14, 'Do you make this entry in good faith for the appropriation of the land

(Testimony of Hiram F. Lewis.)

exclusively to your own use, and not for the use or benefit of any other person,' do you remember that question?" "Answer. Yes, sir." "Question. You

answered that [846—516] question, yes. Now, was that answer true or untrue at the time it was made?" "Answer. Untrue." "Question. Question

15. Has any other person than yourself, or any firm, corporation or association any interest in the entry you are now making or in the land or in the timber thereon? Your answer to that was, no. Was that answer true or false at the time it was made?"

"Answer. False." "Question. Did you know it to be so?" "Answer. Yes, sir." Do you remember

those questions being asked you and those answers made by you? A. At Moscow?

Q. Yes, sir.

A. No, sir, I don't remember now.

Q. Do you remember them being asked and made by you at any other place than Moscow?

A. I think they were asked in the land office; I don't remember.

Q. I am asking you whether you remember those questions I have read being asked at the trial at Moscow, and whether or not you made the answers also that I have read.

A. No, sir, I don't remember.

Q. You wouldn't say they weren't asked you, would you? A. No, sir.

Q. And you wouldn't say you didn't make those answers, would you? A. No, sir.

(Testimony of Hiram F. Lewis.)

Q. Continuing, I read from page 496 of the same record: "Mr. Lewis, question 16 on this blank: 'Did you pay out of your own individual funds all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?' To the first part of that question, read as follows: 'Did you pay out of your own individual funds all of the expenses of making this filing?' To that question you answered, 'Yes.' Now, was that answer true at the time you made it?" "Answer. No, sir." Do you remember that question being asked you and that answer made by you at the trial at Moscow to which I have referred? [847—517]

A. No, sir, I don't remember just now.

Q. Well, if it was made by you at that time it was true, was it?

A. No, sir. I never said—I always said I had the money partly.

Q. What is that?

A. I always said I had part of the money and borrowed the rest of it on a note.

Q. Is that what you said in your answer at the land office? A. I think so.

Q. Are you sure? A. I think so.

Q. I asked you if you are sure.

A. Well, I think so. I wouldn't swear to it.

Q. Do you remember this question being asked you: "Question 17: 'Where did you get the money to pay for this land, and how long have you had the same in your actual possession?' To the first part of that question, reading, 'Where did you get the

(Testimony of Hiram F. Lewis.)

money with which to pay for this land,' you answered, 'Saved it from my earnings.' Was that answer true or untrue at the time it was made?"

A. It was true.

Q. Well, at that trial you answered, "Untrue." Which is the truth?

A. I saved the money from my earnings.

Q. The money you paid in the land office at final proof?

A. Oh, final proof? Part of it. I thought you said the filing fees.

Q. No, I said final proof. Why did you answer that in that way if it wasn't all money you had saved from your earnings?

A. Because I had borrowed part of it from the bank.

Q. But you had borrowed about \$400.00 from the bank, had you not? A. Yes, sir.

Q. And your final proof was about \$400.00, wasn't it?

A. It was more than that on the two claims. I borrowed enough so [848—518] as to have some to pay for my brother's claim too.

Q. Why did you say, when you testified at the trial that I have been referring to, that that statement was untrue?

A. I don't know as I stated that it was untrue.

Q. Well, I am reading from the record, Mr. Lewis, and if you want to read it yourself—

A. I don't remember it, Mr. Gordon.

(Testimony of Hiram F. Lewis.)

Q. Do you want to state that you have been misquoted in all of these particulars? A. No, sir.

Q. Wouldn't your recollection of these matters be fresher three years ago than it is now?

A. Yes, but I can't remember all of these little details for six or seven years.

Q. Now, you have referred to two transactions you had with the Lewiston National Bank with Mr. Kester, and one of them was with reference to getting the money at about the time you made final proof. That is correct, is it?

A. Yes, sir, I think so.

Q. And didn't you go to the bank and see Mr. Kester and get the money for the location fees also for your claim and your brother's claim?

A. I don't think I did. No, sir, I know I didn't at that time, that is, I don't think I did.

Q. Don't you remember of having testified to that two or three times?

A. No, sir, I don't remember, but I don't think I got it at the same time.

Q. Each time you went to the bank to get money for these claims, or any payment on them, you got it from Mr. Kester, did you?

A. Yes, sir, Mr. Kester; that is the best of my recollection. I don't remember anybody else.

Q. Do you remember this question being asked you at the trial of [849—519] Kester and Kettenbach, at Moscow, in the spring of 1907: "From whom did you get this money when you went to the bank?"

"Answer. Mr. Kester." "Question. On each of

(Testimony of Hiram F. Lewis.)

these occasions?" "Answer. Yes, sir." "Question. Where did you get the money to pay the location fee?" "Answer. In the same way." "Question. How did you happen to go to the bank to get the money to pay the location fees? State the circumstances." "Answer. Mr. Dwyer came to me and told me he had not received his location fee, and we better fix it up. We did so, and I paid him." "Question. Do you remember of anything,—in the first place, I will ask you of whom did you get the money to pay the location fee?" "Answer. From the Lewiston National Bank." "Question. From what individual in the bank?" "Answer. Mr. Kester." "Question. How did you happen to go to the Lewiston National Bank for this purpose at this time?" "Answer. At the instigation of Mr. Dwyer." "Question. Who did you see there if anyone to talk to about this location fee?" "Answer. Mr. Dwyer." "Question. At the bank?" "Answer. Mr. Kester, that is all." "Question. What was said between you and Mr. Kester?" "Answer. I told him that Mr. Dwyer wanted his location fee, and he gave me the money, and I gave him a note for it." "Question. How much money did you get at that time for that purpose?" "Answer. I think I got both fees, \$300.00, I think it was." "Question. What did you do with that money?" "Answer. Gave it to Mr. Dwyer." Do you remember those questions being asked you and those answers being made by you? A. I think so.

Q. And they are correct, are they? That was the

(Testimony of Hiram F. Lewis.)

way the transaction happened?

A. I forget whether I gave it to him then or put it in the bank and then checked it out afterwards.

Q. Now, as near as you can remember, how long after you made proof did you negotiate with Mr. Kester for the sale of your claim? I don't mean when you made the deed. I mean when did you actually sell it?

A. Well, I forget now. It was between sixteen and seventeen months, [850—520] I think, some-think like that. I know I paid taxes on them two years.

The SPECIAL EXAMINER.—It was about that time that you made the deed, wasn't it? He asked you when you first had the negotiations, when you first commenced talking about the trade.

WITNESS.—To transfer the claims?

Mr. GORDON.—Yes.

WITNESS.—Well, I think it was about that time.

Q. How long after you made proof did your brother make proof?

A. I couldn't tell you just how long it was.

Q. Well, was it a week, or two weeks, or three weeks?

A. No, it was two or three months, I think.

Q. How long after you located on your claim did your brother locate?

A. Well, I think that was a month or two; I forget now. No; it was longer than that, I think.

Q. Now, after you made your final proof did you,—after your brother made final proof, didn't you

(Testimony of Hiram F. Lewis.)

go to the bank and take up all the little notes and settle for both claims?

A. No, sir; not after he made proof, because it was quite a while after that I settled up with the bank; I forget just how long it was.

Q. Do you remember why you didn't settle before?

A. No, sir.

Q. Didn't Mr. Kester tell you there was no hurry about it, just to let it rest along that way?

A. I don't remember whether he did; he might have said something of the kind.

Q. Do you remember testifying at the trial of Kester and Kettenbach, to which we have been referring so many times along this line, and I shall read the questions and ask you if you remember them being asked you. "Question. When you had made final proof, or after your brother made final proof, then what transaction did you have at the bank? What transaction did you have at the bank after your brother had made final proof?" "Answer. Why, we settled up for both claims, and it was then [851—521] that I merged these small notes all into one, and they paid me the final balance which was due us both." "Question. The balance of what?" "Answer. Of our location fee, or what we were to receive for our right." "Question. And it was all balanced up and paid up, was it?" "Answer. Yes, sir." "Question. And you say it was all included in the note,—was it all included in the note?" "Answer. Yes, sir." "Question. Why, if you know, did you not convey the land over at that time? What,

(Testimony of Hiram F. Lewis.)

if anything, was said by you to the parties concerning it?" "Answer. Why, Mr. Kester told me there was no particular hurry about it, to just let it lay as it was." "Question. Said what?" "Answer. There was no particular hurry about it; we would just leave it as it was." "Question. When did you finally execute the papers in relation to it?" "Answer. About a year afterwards, I think." Do you remember those questions being asked you, and those answers being made by you?

A. I don't remember all of them, no, sir.

Q. Well, are they the facts?

A. He might have stated that, but I don't remember just now.

Q. Continuing to read from the same transcript, I will ask you if this question was asked you: "State the transaction, how you came to have it?" "Answer. I went to work on the ditch, and I got through, I think it was in May last year, and when I went into town one day I happened to be in the bank and Mr. Kester said that we might as well transfer those papers, and so I went to work and made a transfer to the bank of both claims. I had previous to this had my brother's claim transferred to me." "Question. At whose suggestion, if anyone's?" "Answer. Mr. Kester's." "Question. What had Mr. Kester told you about having your brother's claim transferred to you?" "Answer. He wanted to know if it would be all right to have it transferred over to me, and then have them transferred over to him. I said that I didn't see as there

(Testimony of Hiram F. Lewis.)

would be anything out of the way if he did; I did so.”

“Question. You had your brother’s claim transferred to you?” “Answer. Yes, sir.” “Question.

It was held in your name, then?” “Answer. Yes,

sir.” “Question. How [852—522] long after

your brother made final proof was it before this claim was transferred to you, his claim?” “Answer. I

think it was about a year or something like that, ten months, maybe.” “Question. Then it was trans-

ferred to you shortly before,—did you transfer it shortly before you executed this deed to Mr. Kes-

ter?” “Answer. Yes, sir.” Do you remember those questions being asked you and those answers

being made by you? A. I think they were.

Q. And they state the facts as they are, do they?

A. No, sir; not exactly.

Q. You stated them that way, didn’t you?

A. I think I did, but right there was something Mr. Johnson or Mr. Ruick cut out. I stated that I offered other parties the claims, and tried to sell them to other parties, and then went to Mr. Kester to sell them. I tried to sell them to two or three different timber outfits.

Q. And after you made out the deeds you carried them to the courthouse and had them recorded, did you? A. Yes, sir.

Q. At whose suggestion was that?

A. I don’t remember whether Mr. Kester asked me to or not now.

Q. Was the deed made to them or directly to the Lewiston National Bank?

(Testimony of Hiram F. Lewis.)

A. Well, sir, I couldn't say as to that now, either; I forget which.

Mr. GORDON.—Take the witness.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Lewis, you said that you tried to sell your land to someone else. Can you remember who you tried to sell it to?

A. I tried to sell to Mr. Williams, for one, and Joe Malloy, and I think afterwards Mr. Brown. There was two or three parties I know that I tried to sell it to. [853—523]

Q. That was after you bought your brother's claim? A. Yes, sir.

Q. What success did you have in trying to sell it to them?

A. I couldn't get rid of it; I couldn't dispose of it. They all said it was second growth timber and didn't want it.

Q. How did you come to go to Kester and sell it to him?

A. I went to him just the same as I had been going to these others afterwards, and asked him if he wouldn't buy those claims, that I had tried to sell them to others and couldn't do it, and he finally said if I couldn't sell them he would try and see what he could do to take them off my hands.

Q. Did he tell you to go and see someone else and try to sell them?

A. Yes, sir; he told me to see someone else and to sell them if I could.

(Testimony of Hiram F. Lewis.)

Q. And you went and tried to sell them to somebody else after that? A. Yes, sir.

Q. Then, came back to him? A. Yes, sir.

Q. Wasn't the reason your brother didn't get as much as you did, because he had a short claim, only three forties? A. Yes, sir.

Q. That is the reason you didn't get as much for his claim as for yours? A. Yes, sir.

Q. You say that when you would tell Mr. Ruick and Mr. Johnson something that it was a fact that they would say, "Cut that out; we don't want that?"

A. Yes, sir.

Q. Because that was something that was favorable to the defendants?

A. Yes, sir; I think that was their reason for doing that.

Q. Can you remember any particular thing they told you to cut out?

A. When I spoke about selling these claims to others, they ordered [854—524] that cut out. And in regard to the attorneys Mr. Gordon just brought up, there was another—

Q. Well, Mr. Gordon didn't ask you anything about that; he didn't have that go into the record. That was just talk between ourselves. Can you think of anything else?

A. Well, in regard to borrowing the money, too.

Q. What was that?

A. He asked me or tried to make me state that I had borrowed all of it, all of this money from the bank, didn't have any of my own at the time, and I

(Testimony of Hiram F. Lewis.)

told him I did have money there at the time, borrowed it and gave my notes for it at the bank.

Q. Can you think of anything else?

A. Well, in regard to intimidating me. He threatened to impeach me and indict me, and everything else pretty near, if I wouldn't come out and tell it just to suit them.

Q. I will ask you if you told them anything about paying taxes on the land, and that they told you to cut it out?

A. Yes, sir; I told him I had paid taxes for two years, and had the tax receipts at home,—I had them with me at the same time,—and they said they didn't want me to say anything of that kind, wouldn't allow it; and I have those tax receipts up home now.

Q. You did pay taxes on the land, did you?

A. Why, I paid it for two years.

Q. You stated, Mr. Lewis, that you wasn't sure whether it was just before you filed your sworn statement that you borrowed the money from the Lewiston National Bank or just before you made final proof. Will you give us your best recollection of it now?

A. I think I borrowed some before,—I won't say for sure; and then I think I borrowed some later on; I am pretty sure I borrowed money twice.

Q. Did you say I. N. Smith prepared your filing papers? A. Yes, sir. [855—525]

Q. Do you remember what you paid him for it?

A. I think it was \$6.00.

Q. Aren't you mistaken about that? Wasn't it

(Testimony of Hiram F. Lewis.)

\$1.00 you paid him?

A. I won't say about that; I ain't sure just what it was, the amount. He just merely made out the papers for me.

Q. How much money did you say you had of your own in the Idaho Trust Company at the time?

A. Between \$300.00 and \$400.00.

Q. And, as I understand you, you had no contract or agreement with anyone for the sale of this land before you filed your sworn statement?

A. No, sir.

Q. Or before you made your final proof?

A. No, sir.

Q. And any statement that you may have made relative to that in the two former trials in conflict with your evidence here is wrong, is it?

A. Yes, sir.

Q. Then the affidavit you made when you filed your sworn statement, "That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, or in any way or manner, with any person or persons whomsoever, made any agreement or contract, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that statement was true, was it? A. Yes, sir.

Q. At the time you made it? A. Yes, sir.

Q. And at the time you made your final proof?

(Testimony of Hiram F. Lewis.)

A. Yes, sir.

Q. And it is still true? A. Yes, sir. [856—526]

Q. Mr. Gordon asked you concerning the evidence that you gave at the former trial, and he asked you particularly about your direct examination, and read certain portions of your evidence. I will ask you if you remember of identifying an affidavit which you made in the former trial, and which was introduced in evidence in the trial of Kester, Kettenbach and Dwyer, case No. 1605, identified by the stipulation heretofore entered into by counsel, in which the following statement was made, and which affidavit you also testified was true:

“State of Idaho,
County of Nez Perce,—ss.

Hiram F. Lewis, being duly sworn, says: That he is the identical Hiram F. Lewis who testified in the United States Court for the Northern Division, District of Idaho, in the case of the United States of America, Plaintiff, vs. William Dwyer, Defendant; that prior to testifying in said cause I was interrogated by N. M. Ruick, U. S. District Attorney, and told the said U. S. District Attorney many things regarding my purchase of the tract of land in question, which the said Ruick ordered his stenographer to strike from his notes with the statement: ‘We don’t want that,’ and this was always the case when any statement was made which was unfavorable to the Government’s case, or favorable to the defendants. Mr. Ruick also told me three or four times if I did not make certain statements he would take

me before the judge and have me impeached, and many other things which caused me to fear the consequences if I did not leave out of my evidence certain statements which he requested the stenographer to strike out, and add others at his request.

I told Mr. Ruick, among other things, prior to being placed upon the stand as a witness in said case that I owned my land and showed him tax receipts, and that I had tried to sell to other parties, Mr. Williams and Joe Malloy, and there was nothing to prevent me from selling to anyone. I also stated to Mr. Ruick I did not borrow the money from the Lewiston National Bank expressly for the purpose of [857—527] paying for the land, and I had done business with the bank before this timber matter ever came up; that I came to Lewiston for the purpose of getting some timber claims, and using my rights. All this he had the stenographer strike out with the statement: 'We don't want that.' All these statements I aver and swear to be true as herein stated.

I told Mr. Ruick I never made a prior agreement with Mr. Dwyer or Mr. Kester or anyone else; that Mr. Dwyer only told me if I took the claim I could make a little money out of them, and he did not care who I sold them to; so he got his location fee, which is true, and the statements made by Mr. Dwyer to me.

I owned the land fourteen or fifteen months, and tried to sell to other parties, among them being Mr. Williams and Joe Malloy, but no one seemed to want to buy that class of timber at that time.

Mr. Ruick wanted me to make the statement that

Mr. Dwyer looked me up, but that is not true. I was looking for timber, and a chance to locate, and went to Mr. Dwyer myself and offered to pay him his location fee if he would find me a timber claim.

In regard to leaving Mr. Dwyer before I went to Moscow, Mr. Ruick made the suggestion that the defendant had good attorneys. I said Mr. Dwyer told me that if everybody told the truth it would come out all right. Mr. Ruick says, 'Did he not say you would all have to stand together,' but that is not what Mr. Dwyer said. He said, 'If everybody tells the truth, everything will come out all right.' He never said anything about attorneys.

I also state that nothing was said about money being procured from Mr. Kester or the Lewiston National Bank prior to making my declaratory statement, or filing my application to purchase the land, and we had not discussed money affairs until a short time prior to time for making final proof. In fact, I supposed I would have a sufficient amount of money to make the payments, and did not think I would have any trouble raising it if I did not. [858—528]

A short time prior to making final proof, I went to Mr. Kester, and asked him for a loan of the balance of the money necessary to make the payments, and promised to pay him when I sold the claims. Mr. Kester loaned me the money, and I gave him my notes for same, taking it over and depositing it in Idaho Trust Company. We had no arrangement for the purchase of the claims either by Mr. Kester or Mr. Dwyer or anyone else up to this time.

Some time after making final proof, Mr. Dwyer

asked me for his location fee. I again went to Mr. Kester for the money and told him I would pay him as soon as I found a purchaser for the claim. I gave my note for the money, took same to the Idaho Trust Company, and deposited it, and in about two weeks thereafter, I drew out money to pay Mr. Dwyer his location fee, and paid him the first time I saw him, which was about a week after I drew it from the Idaho Trust Company. I had no agreement with Mr. Dwyer or Mr. Kester or anyone else to purchase these claims at this time.

Later on, after I had tried to sell the claims to different parties without success, I went to Mr. Kester and asked him if he would not buy the claim. He (Kester) says, 'I do not care to buy them,' and asked me if I could not sell them to someone else. I told him no, I had tried and cannot do so; I want to pay my note, and you had better buy them. We had some conversation regarding price, and finally reached an agreement and I sold the claims. This is the only arrangement I had with Mr. Kester or Mr. Dwyer or anyone else regarding the purchase of these claims. I further aver that I made this statement of my own free will and not at the request or suggestion of anyone; that I have carefully read the foregoing affidavit, know its contents and aver the same to be true as therein set forth.

HIRAM F. LEWIS.

(Testimony of Hiram F. Lewis.)

State of Idaho,

County of Nez Perce,—ss.

On this 17th day of December, A. D. 1906, before me, Chas. L. [859—529] McDonald, a notary public in and for said county, personally appeared Hiram F. Lewis, known to me to be the person whose name is subscribed to the foregoing affidavit, who, after carefully reading the same to the said deponent, and explaining to him its contents stated to me that he subscribed his name thereto for the uses and purposes therein set forth.

HIRAM F. LEWIS.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate above written.

[Notarial Seal] CHARLES L. McDONALD,
Notary Public in and for Nez Perce County,
Idaho.”

Mr. TANNAHILL.—Q. You remember of identifying that affidavit that was introduced in evidence at that time, do you? A. Yes, sir.

Q. State whether or not that affidavit is true.

A. It is.

Q. And regardless of what you may have said under coercion from Mr. Ruick or Mr. Johnson or Mr. Goodwin or anyone else, or what you may have said voluntarily, or what you may have said inadvertently in the other two trials, or in any statement that you made for Mr. Goodwin or Mr. O’Fallon or Mr. Johnson, the statements you make now are true, are they? A. Yes, sir.

(Testimony of Hiram F. Lewis.)

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Lewis, do you remember, after that affidavit was introduced in evidence at the trial to which Mr. Tannahill has referred, that you were examined by Mr. Johnson? [860—530] A. No, sir.

Q. How do you remember all that affidavit that was there, and the truth of it, and the minute after you don't remember that you were examined about it?

A. I don't remember that I was examined about it, without it was on the stand.

Q. I mean on the stand, in court.

A. I don't think Mr. Johnson examined me.

Q. And yet you remember all that affidavit, and a minute later you don't remember that you were examined about that affidavit by Mr. Johnson?

A. I was thinking it was Mr. Ruick.

Q. Do you remember being examined by somebody at that trial?

A. Mr. Johnson started to get up and he was so rattled he couldn't, and Mr. Ruick took it up.

Q. The record shows that Mr. Johnson conducted it.

Mr. TANNAHILL.—Mr. Johnson quit quick.

WITNESS.—He started in at it, but he didn't do it, I think.

Mr. GORDON.—Do you remember whether at that time you were working for the contracting firm of Naylor & Norlin? A. Yes, sir.

Q. Do you remember whether Mr. Kester got Mr.

(Testimony of Hiram F. Lewis.)

Dwyer to come to see you with reference to getting that affidavit?

A. I gave it of my own free will.

Q. You did? A. Yes, sir.

Q. You gave it to Dwyer, did you, of your own free will? A. Yes, sir.

Q. Do you remember whether, in that trial, after that affidavit had been read and you had testified similarly to what you have now, this question was asked you by either Mr. Ruick or Mr. Johnson? The [861—531] record shows Mr. Johnson. “Question. I will ask you if it was not a fact that George H. Kester came to you after you were a witness and under oath, and examined, and told you that unless you signed a document that he prepared for you, that you would lose your job?” “Answer. No, sir.” “Question. Didn’t he induce you to make a statement here similar to that?” “Answer. Mr. Kester?” “Question. Yes, or some one for him?” “Answer. No, sir. Mr. Kester never did.” “Question. Mr. Dwyer spoke to you for him?” “Answer. Yes.” “Question. What did he tell you in relation to that?” “Answer. He kind of ripped me up the back for the way the case had gone here.” “Question. What portion of this statement is it that you say is not true?” “Answer. I said this: That the statement I made, Mr. Dwyer took down in his own handwriting.” “Question. This statement?” “Answer. Afterwards this was taken somewhere and typewritten and I never read it afterwards, the statement.” “Question. Did you tell

(Testimony of Hiram F. Lewis.)

him that Mr. Ruick took your statement? Did you tell Mr. Dwyer that Mr. Ruick took your statement?"

"Answer. Here before this Court? Yes, I think so." "Question. The first time you were here?"

"Answer. Yes, I think I did." "Question. You told him that, did you?" "Answer. Yes, sir."

"Question. That is not a fact, is it?" "Answer. Yes, I think it is." "Question. Is it not a fact that

when you first came here to the grand jury that you were brought up and made a statement before you came, before the last day you made a statement to myself voluntarily, and voluntarily in the presence of Mr. Goodwin, and either Mr. Pelletier or Mr. Greb, and that Mr. Ruick was in the grand jury room at this time?" "Answer. I think it was Mr. Ruick,

Mr. Johnson; I think Mr. Ruick took my statement."

"Question. Did you make any statement to Mr. Dwyer that Mr. Ruick had made any suggestion to you in reference to your first statement that you made?" "Answer. No, sir; I don't think I did."

Now, after you had identified that affidavit that Mr. Tannahill has read to you, do you remember those questions being asked you and those answers made by you? [862—532]

A. I remember some of them.

Q. Which of them don't you remember?

(No answer.)

Q. Which of them don't you remember?

A. I don't remember the conversation with Mr. Kester at all, about that affidavit.

Q. But you remember all the transactions of that

(Testimony of Hiram F. Lewis.)

five printed page affidavit that was read to you? Is that correct? A. I do, as he reads it over here.

Q. And still you don't remember the few questions I have read to you that were asked you at the same time? Is that correct?

A. I say I remember part of them, but not all of them.

Q. Which one is it you don't remember?

A. I don't know as I could tell you without looking it over.

Q. Well, you take the book and look it over and see which you can remember, and which you can't.

Mr. TANNAHILL.—Oh, we object to that.

Mr. GORDON.—(Handing witness book.) That is where I began reading, and any question which you don't remember being asked you there—

A. In regard to Mr. Kester's conversation there, that isn't so.

Q. Yes, sir. Now look at the rest of it. You say that question wasn't asked you?

A. No, sir; that is, it might have been asked me, but I say it wasn't so. Mr. Kester never said anything about losing my job or anything of the kind. And in regard to Mr. Dwyer coming to me,—I went to Mr. Dwyer and told him I was going to give the affidavit.

Q. Do you mean to say you didn't make that statement in court at Moscow? Is that what I am to understand? A. Yes, sir.

Q. Are you positive that that report there misquotes you?

(Testimony of Hiram F. Lewis.)

A. I don't remember that I answered it that way.

[863—533]

Q. Don't you know, as a matter of fact, that you did answer that question that way?

A. I may have done at that time.

Q. Was it the truth or wasn't it the truth?

A. It wasn't the truth.

Q. Did you deliberately make a false statement there?

A. I either did, or didn't understand it, but I don't remember answering it that way at all, because I know I went to Mr. Dwyer myself, and as for him ripping me up the back, I never made that statement.

Q. It isn't Mr. Dwyer's nature to speak unkindly to anybody, is it, Mr. Lewis?

A. Well, I think not.

Q. Did you make that statement? That is what I want to know.

A. Well, I don't remember that I did.

Q. Now, let me ask you this: Did any of them talk to you between the time that Mr. Tannahill cross-examined you with reference to that affidavit and the time you were examined by Mr. Johnson or Mr. Ruick? A. No, sir.

Q. It was just immediately following, wasn't it?

A. That I made the affidavit?

Q. Immediately following the reading of the affidavit to you by Mr. Tannahill at the former trial that you were examined and made those answers? Is that correct? A. I think it was.

Q. Was there anything in any of those questions

(Testimony of Hiram F. Lewis.)

that you can't understand, or that there could be any misunderstanding in your mind as to what was meant by them?

(No answer.)

Q. Will you answer?

A. I don't remember Mr. Ruick taking that statement.

Q. You say what? [864—534]

A. I don't remember of his taking that statement.

Q. Is that all that isn't correct there?

A. Well, there is two or three of those questions there that I don't remember answering at all that minute.

Q. You know that you did answer them, don't you, that way?

A. Yes, sir, but I don't remember them now.

Q. Were you telling the truth when you answered them? A. I guess I was.

Q. Are you telling the truth now?

A. I think so.

Q. You are not at all excited now, are you, Mr. Lewis? A. No, sir.

Q. And no one has attempted to intimidate you?

A. No, sir, not recently.

Q. I mean anybody that has been connected with the case since I have been in it? A. No, sir.

Q. Now, do you remember these questions being asked you immediately after you were interrogated with reference to that affidavit and identified it?
“Question. Do you recall this circumstance, that when you came up here last fall as a witness that I

(Testimony of Hiram F. Lewis.)

did interrogate you on two occasions at least before you testified?" "Answer. Yes, sir." "Question. And that I had before me the typewritten statement you had made before, do you recall that?" "Answer. Yes, sir." "Question. And I interrogated you from that typewritten statement, didn't I?" "Answer. Yes, sir." "Question. Do you recall any intimidation used upon you when you made the statement a year ago in my office?" "Answer. A year ago last fall?" "Question. Yes." "Answer. No, sir." "Question. You have no recollection of any intimidation of any sort?" "Answer. A year ago last fall?" "Question. Yes, sir." "Answer. No, sir; not a year ago last fall, but there was last fall." "Question. [865—535] At the time you made this statement, you recall no intimidation at all?" "Answer. No, sir." Do you remember those questions being asked you and those answers made by you?

A. Why, I was off in regard to the dates there, is all.

Q. You got a little mixed on your dates?

A. I was thinking I was only at Moscow one time, but I had been up there twice.

Q. You were a little off on your dates, were you?

A. Yes, sir.

Q. The statement that he had reference to, was that the statement he handed you and that you swore to before Goodwin? A. No, sir.

Q. Wasn't that the only statement you ever signed?

(Testimony of Hiram F. Lewis.)

A. They asked me to sign one, but I wouldn't do it.

Q. That is the only statement that you ever signed, isn't it? A. Yes, sir.

Q. Why wouldn't you sign the other statements they asked you to? A. Because I wouldn't do it.

Q. Why?

A. I think it was subsequent to the time this statement was made, and I wouldn't sign it.

Q. Had somebody given you good advice on the subject? A. No, sir.

Q. Why wouldn't you sign it?

A. They wanted me to go in the sweat-box afterwards, and I wouldn't do that either.

Q. That isn't the question. Why wouldn't you sign the other statement?

A. I got over being intimidated, and found out that the thing had been outlawed, and they couldn't do anything with me, so I wouldn't do it. [866—536]

Q. Hadn't the statute run when you were testifying here? A. No, sir.

Q. This was the last trial that was had.

A. Well, it is the same proceeding all the way through, isn't it?

Q. When was it that you declined to sign a statement because the statute had run?

A. Three years ago, I think.

Q. Was it after these trials?

A. No, sir; it was just after this trial, I think, the last trial at Moscow.

(Testimony of Hiram F. Lewis.)

Q. What did they want you to sign a statement for then?

A. Johnson got up something and wanted me to sign it, and I wouldn't.

Q. That was after this trial we are talking about now, that I am reading from the record of?

A. Yes, sir.

Q. Of course, then, you didn't have that other statement in your mind then, because that didn't happen till afterwards, did you?

A. I think that is correct; they got up one afterwards, and I wouldn't sign it.

Q. I am talking about the statement you made when you said you weren't intimidated. What statement was that?

A. I don't think I ever made any such statement.

Q. It is in the record, Mr. Lewis. You know you made that statement, don't you?

A. It says there that I was intimidated, don't it?

Q. I haven't got to that yet. But wasn't this question asked you: "Do you recall any intimidation used upon you when you made the statement a year ago in my office?" "Answer. A year ago last fall?" "Question. Yes." "Answer. No, sir." "Question. You have no recollection of any intimidation of any sort?" "Answer. A year ago last [867—537] fall?" "Question. Yes, sir." "Answer. No, sir; not a year ago last fall, but there was last fall." A. That was the first trial.

Q. Yes. Now, the statement I showed you today though was made in 1905, which was a year before

(Testimony of Hiram F. Lewis.)

this time you referred to. Wasn't that the statement you referred to that you weren't intimidated in?

A. I don't remember. It was,—I think it was after that. It was that same fall anyhow, or that same time.

Q. Was it that you declined to sign these statements just for contrariness, or was there something in them that wasn't true?

A. Well, I knew I didn't have to sign any statements. They wanted me to go up in the sweat-box and sign one of these statements, and I told Johnson I didn't have to do it.

Q. This place, this sweat-box, was a regular room at Moscow, the sweat-box was a regular room, wasn't it? They didn't have a place to turn on the heat, or anything of that kind, did they?

A. I don't know; they might have turned the heat on.

Q. I mean it was just a regular office. What made you give it that term?

A. I don't know why they gave it that name, but that was the common name it went by, the office.

Q. "At the time you made this statement, you recall no intimidation at all?" "Answer. No, sir." "Question. This statement was made free and voluntarily, was it?" "Answer. Yes, sir." Wasn't that the statement I have shown you here to-day? A. I think it was.

Q. And you weren't intimidated when that statement was made, when you made that before Mr. Goodwin, were you, Mr. Lewis?

(Testimony of Hiram F. Lewis.)

A. I didn't read that over at the time I signed it.

Q. Do you remember this question being asked you: "Now, Mr. Lewis, was that original statement made at the request of Mr. Dwyer? [868—538] How was it taken? State the circumstances under which it was taken." "Answer. You mean this statement?" "Question. I mean this statement produced here and put in evidence to which you refer. I understand that after you left, after the Dwyer trial was concluded last fall, that you were approached by Mr. Dwyer, is that correct?" "Answer. Yes, sir." They have reference to the statement Mr. Tannahill has just read to you. Do you remember those questions being asked you and those answers made by you? Is that correct?

A. No, sir; I went to Mr. Dwyer myself.

Q. Then did you deliberately sit there in court and tell what wasn't true? A. No, sir.

Q. Let me ask you this: Did Mr. Ruick or Mr. Johnson know that you had given this affidavit to Mr. Dwyer? A. I don't know that they did.

Q. Had you told them of it? A. No, sir.

Q. Then, as a matter of fact, you know they didn't know it, don't you?

A. They had it in court at this time, I think.

Q. They didn't have it. Didn't counsel for the defendants have it?

A. I don't know whether they had a copy or not.

Q. Do you mean to say then that this statement that Dwyer came to you and got isn't true?

A. I wouldn't say just how it was now, whether he came to me or we met on the street or some way, how

(Testimony of Hiram F. Lewis.)

it was.

Q. They hadn't talked this over with you, had they? A. No, sir.

Q. "Question. Now, state the whole thing, all about it." "Answer. I say I met him on the street, I think there one day, and as [869—539] I said, he was feeling kind of sore, the way the case had gone, and he said he didn't think I had done him justice, or something to that effect." "Question. Did you say that he stated that you hadn't done him justice? He said who hadn't done him justice?" "Answer. He said I hadn't done him justice." Do you remember that conversation with Mr. Dwyer?

A. I think I did, something to that effect; I don't remember whether it was just that.

Q. "The Court.—Tell the whole thing, how it occurred, without waiting for the counsel to interrogate." "Answer. Also that I met him going up to his office and he took down the statement, wrote it down himself, and afterwards had it typewritten, and in regard to just what was said there, I couldn't state fully to what was said, but he took it down somewhere and had it typewritten and afterwards brought up this, as I say, I never read it after that was copied." "Question. You never read it after it was typewritten?" "Answer. No, sir, which I should have done. It was taken in that form." "Question. You swore to it you think in this form?" "Answer. Yes, sir." Do you remember those questions being asked you and those answers made by you? A. I think I did.

(Testimony of Hiram F. Lewis.)

Q. You had never read that statement Mr. Tannahill read to you until it was read in Mr. —

A. I don't think I read it over after it was copied; I read it over in the first place.

Q. How long were you in Mr. Dwyer's office on that occasion? A. A couple of hours, I guess.

Q. Didn't you testify, when you were asked by these gentlemen on their examination in direct, after that statement was read to you, that you were in there only twenty minutes?

A. It might have been twenty minutes and it might have been two hours. [870—540]

Q. Don't you know the difference between twenty minutes and two hours?

A. I don't know just how long I was in there.

Q. Didn't you tell them it was twenty minutes?

A. I don't remember now.

Q. Don't you know as a fact that you did?

A. No, I don't remember now.

Q. I will ask you if this question was asked you, referring to the time in Mr. Dwyer's office when he took that statement: "You don't think you were over fifteen or twenty minutes that you were up there?" "Answer. No, sir." "Question. Here is a statement containing 700 or 750 words, and you say that Dwyer wrote this out in fifteen minutes?" "Answer. It don't seem to me I was up there that long; it was a very short time." Do you remember that statement being made?

A. I might have said it; I don't remember.

Q. Was it the truth?

(Testimony of Hiram F. Lewis.)

A. I don't remember whether I said it or not.

Q. Haven't you any idea how long you were there?

A. No, sir; it might have been twenty minutes or it might have been two hours.

Q. Can you repeat one word that was in that affidavit that you said you remembered it was all true?

A. Yes, sir, it is true.

Q. I mean that affidavit that was read to you, can you recollect one word that is in it? A. Yes, sir.

Q. Please tell what it is.

A. About the lawyers and Mr. Dwyer there.

Q. That they had good lawyers?

A. That they had good lawyers.

Q. Is that all that you can remember of it?

A. Well, I can't recite it. [871—541]

The SPECIAL EXAMINER.—Do you remember whether that typewritten copy that you signed was worded identically the same as the one Mr. Dwyer drew up there at the time?

A. Well, if I am not mistaken, Mr. McDonald read that over after it was typewritten before I signed it.

Mr. GORDON.—Q. Do you remember at the time that affidavit was identified by you in court whether or not it was handed to you by counsel for the Government immediately thereafter, and he asked you to point out the parts in it that were true and the parts that weren't true?

A. No, sir; I don't remember that they did.

Q. Do you remember them reading the affidavit to you? A. The counsel?

Q. Yes,—counsel for the defendants reading that

(Testimony of Hiram F. Lewis.)

affidavit to you?

A. I forget whether they read it or handed it to me.

Q. Do you remember whether or not it was handed to you by counsel for the Government, and they asked you to point out the parts in it that were true and the parts that were not true?

A. I don't remember whether they did or not.

Q. Do you remember when that affidavit was handed up to you, and you were asked to point out the things you did not say, that you said this: "Prior to being placed upon the stand as a witness in said case that I owned my land and showed him tax receipts." "Question. What about that?" "Answer. That is one that I don't think I ever said." Did you testify to that at Moscow?

A. Well, I don't remember whether I said that or not.

Q. I am speaking about, that was in that transaction. Well, now, what has refreshed your recollection that that part of that affidavit is correct and that you told Mr. Ruick that?

A. That part is correct, because I have the receipts now at home.

Q. And you testified in court when that affidavit was handed to [872—542] you by the Government counsel that you didn't tell Mr. Dwyer that, didn't you? A. I don't remember that I did.

Q. You don't remember testifying that way?

A. No, sir.

Q. I am reading from the record of your testi-

(Testimony of Hiram F. Lewis.)

mony, and I will ask you again: "Prior to being placed upon the stand as a witness in said case that I owned my land and showed him tax receipts." "Question. What about that?" "Answer. That is one that I don't think I ever said." "Question. How?" "Answer. That one, that one thing I don't think I ever said, two or three places here, as I say, I marked them." "Question. Read them out, just read them out." "Answer. Also that, 'I told Mr. Ruick I never made a prior agreement with Mr. Dwyer or Mr. Kester.' " "Question. You want to strike that out?" "Answer. Yes." Do you remember those questions were asked you and those answers made by you, when you were examined by the Government counsel immediately after you had been interrogated by counsel for the defense with reference to that affidavit which had been produced and shown you?

A. If I did, I don't remember it now, because I never did make no prior agreement.

Q. You know you did make those statements if it is here in the record, don't you?

A. Yes, sir, I must have made them.

Q. Was it the truth or wasn't it the truth?

A. It wasn't the truth.

Q. Don't you know when you are telling the truth and when you are not? A. Yes.

Q. Do you tell an untruth when you don't intend to? A. I don't intend to tell an untruth.

Q. Don't you remember, as a matter of fact, that you had that affidavit in your hand and pointed that

(Testimony of Hiram F. Lewis.)

matter out and said you didn't [873—543] tell Mr. Dwyer that?

A. I said I didn't remember doing it at the time.

Q. What has refreshed your recollection?

A. I don't remember whether I did or not.

Q. You answered Mr. Tannahill that the affidavit he read to you was true in toto, and you don't remember whether it was true or not. Is that correct?

A. When he read it over I remember I gave it at the time.

Q. All of it? A. Well, most of it; yes, sir.

Q. What part of it didn't you give?

A. I don't remember that.

Q. Did you give the part of it that you pointed out up there when the matter was fresh in your mind?

A. I said I didn't remember giving that to him, or I don't now.

Q. Then, when Mr. Tannahill read that to you this evening and you told him it was all true, you didn't know whether it was true or not, did you?

A. If I signed it that way I must have given it some time, like these records here.

Q. You told me just now that you didn't read that affidavit over that Mr. Tannahill—

A. I said I didn't read it over after it was type-written, but Mr. McDonald read it over to me.

Q. Is that it? A. Yes, sir.

Q. And you remember all of that?

A. Yes, sir; I remember he read it to me.

Q. I will ask you whether this is true or not, when you were directed by counsel to read out the parts

(Testimony of Hiram F. Lewis.)

that weren't correct and you read this out: "That I told Mr. Ruick I never made a prior agreement with Mr. Dwyer or Mr. Kester." Didn't you state in court that that part of [874—544] that affidavit wasn't true? A. No, sir; I don't think I did.

Q. Was that part of that affidavit true?

A. That I never made no prior agreement?

Q. Yes, sir. A. Yes, sir.

Q. Hadn't you testified in the court half a dozen times just prior to that that you had had an agreement?

A. No, sir; I never have acknowledged that I had a prior agreement to anybody.

Q. "Witness," continuing: "I also state that nothing was said about money being procured from Mr. Kester or the Lewiston National Bank." "Question. Want to strike that out?" "Answer. Yes." Do you remember whether you wanted to strike that out at that time? A. No, sir.

Q. Will you say you didn't want to strike it out, and that you didn't tell them that?

A. I won't say; I don't remember now.

Q. What are we to understand,—that that affidavit which has just been read, all of it, is true? You know, Mr. Lewis, it can't all be true when you are talking to one person and all not true when you are talking to another person, don't you? A. Yes, sir.

Q. I ask you what the truth of the matter is.

A. Well, he just read this over to me here, the whole thing.

Q. Is the whole of that true?

(Testimony of Hiram F. Lewis.)

A. The most of it; yes, sir.

Q. Then the testimony that you gave concerning it at the other trial wasn't true, is that right?

A. Yes, sir.

Q. Then you told what wasn't true when you testified with relation to those things at Moscow, did you?

[875—545] A. Yes, sir.

Q. And you did it deliberately?

A. Well, I didn't intend to.

Q. I will ask you if this question was asked you while you were still reading the affidavit after the question I just asked you before was read: "Is that all?" "Answer. Yes, that is all." "Question. Mr. Lewis, last fall,—will you let me have that statement, please,—last fall when I was interrogating you as a witness before you testified in the case, I have your,—I had the typewritten statement that bore your signature, didn't I?" "Answer. Yes, sir." "Question. In other words, I had this statement, didn't I?" "Answer. Yes, sir." "Question. And you began to tell me a different story from that contained in this statement, didn't you?" "Answer. Well, I don't remember about all the things word for word." "Question. Didn't you, don't you think you did?" "Answer. Perhaps, a little." "Question. Began to talk differently and tell me a different story from what you had sworn to one year before?" "Answer. It was not my intention to do so, but I didn't remember it." "Question. Don't you recall the circumstance that you began to tell me a different story?" "Answer.

(Testimony of Hiram F. Lewis.)

Yes, sir.” Don’t you remember those questions being asked and those answers made by you?

A. No, sir.

Q. Then, is there any statement that can be read to you that you remember what was said at that trial except that affidavit that has been read to you and that you said was all true?

Mr. TANNAHILL.—We object to that.

A. There is some of them I don’t remember.

Mr. GORDON.—Q. Well, I will take them one by one. Do you remember this question being asked you by Mr. Johnson at the time just referred to: “And I asked you how it happened your story was so different from what you had testified to before?” “Answer. Yes, sir.” Do you remember that [876—546] question being asked you and that you made that answer? A. I think so.

Q. “And I asked you which one of the statements was correct, and which one you proposed to stand on, the one you had made the year before, or the one you now made? You remember my asking you that?” “Answer. Yes, sir.” Do you remember that question and answer? A. I think I do.

Q. “And which statement did you decide to stand on?” “Answer. The former statement.” Do you remember that?

A. No, I don’t remember that I did.

Q. “Question. You decided to stand on the former statement and did I not tell you that if the former statement was true I should insist on you testifying as you did in the former statement?” “Answer.

(Testimony of Hiram F. Lewis.)

Yes, sir.” Do you remember that question being asked you and that answer being made by you?

A. I think I do.

Q. And that was a fact, wasn't it? In other words, you had gone up there and were attempting to change your statement, and they drew the first statement on you and wanted to know which one you were going to stand by, is that correct?

A. No, sir; just like I said before, Johnson had always intimidated me, and I thought I had to do just as—

Q. But this was in court, now. There wasn't anybody intimidating you there. Do you remember this question: “Didn't I tell you that I would not permit you to make one statement under oath and then go and attempt to change?” “Answer. Yes, sir.” Do you remember that question and answer?

A. I think I do.

Q. Weren't you telling the truth then?

A. Yes, sir; you can see right there by that question, the way he was putting it, that he was intimidating me. [877—547]

Q. Well, that was their style of intimidation, was it? A. Yes, sir; one of them.

Q. “Question. I told you that if the facts you had stated in the affidavit of November, 1905, were not true that you were subject to indictment, didn't I?” “Answer. Yes, sir.” “Question. I went through every one of those questions with you, didn't I?” “Answer. Yes, sir.” “Question. And you made a still further statement, didn't you?” “Answer.

(Testimony of Hiram F. Lewis.)

Yes, sir.” Do you remember all those questions being asked you and those answers being made?

A. I think I do.

Q. “Question. And they were taken down by Judge Beatty’s stenographer?” “Answer. Yes, sir.” Do you remember that question being asked and that answer being made by you?

A. I don’t remember now.

Q. You don’t remember somebody sitting there and taking them in shorthand?

A. There was somebody there, but I don’t remember who it was.

Q. “Question. And which reiterated the same facts you testified to and which you stated in November, 1905, didn’t it?” “Answer. Yes, sir.” Do you remember that question being asked and that answer being made by you?

A. No, sir; I don’t think I do.

Q. “Question. Did I use any pressure on you other than tell you that if your statements contained in this affidavit made in 1905, and you testified to any other state of facts that you would subject yourself to an indictment for perjury? Did I use any other pressure than that?” “Answer. Yes, sir.” “Question. What was it?” “Answer. You told me you would take me before the judge and have me impeached.” “Question. Before the judge?” “Answer. Yes, sir.” Were those questions asked and those answers made by you?

A. I think they were. [878—548]

Q. And they were true, were they? A. Yes, sir.

(Testimony of Hiram F. Lewis.)

Q. "Question. You mean by that, that if you went on the witness-stand here and testified to a different state of facts than these, if these facts were true?" "Answer. Yes, sir."

"Question. That I would impeach you, didn't you?" "Answer. Yes, sir."

"Question. Did you regard that as a threat?"

"Answer. Somewhat, yes, sir."

"Question. We went over this statement that was made by you in 1905, and which was sworn to by you, and you admitted to me, did you not, that the facts stated in that statement were true?" "Answer. Yes, sir."

"Question. And I told you if you went on the witness-stand and testified to a different state of facts that I would impeach you?" "Answer. Yes, sir."

"Question. You remember that distinctly, do you not?" "Answer. Yes, sir." Do you remember those questions being asked you and those answers being made by you?

A. I think I do, but, as I stated before, I never read over that affidavit.

Q. But I am talking about what went on during this examination. You told the truth then, did you not? A. Yes, sir.

Q. "Question. And when you started in and told me a whole lot of stuff and I told you that that,—when I asked you a question and you tried to tell me something on another subject, I pinned you right down to the question, didn't I?" "Answer. Yes, sir."

"Question. I required you to say whether a certain fact was or was not true?" "Answer. Yes, sir."

"Question. Have I ever told you or asked you or solicited you, Mr. Lewis, at any time to, or

(Testimony of Hiram F. Lewis.)

intimated to you that I wanted anything out of you except the absolute straight truth?" "Answer. No, sir." Do you remember those questions being asked and those answers made by you?

A. Well, if I was telling the straight truth—

Q. I am asking you whether or not you testified as I have read it [879—549] to you now, when you were being interrogated by the court at Moscow.

A. I think I did.

Q. "Question. Never by any intimidation. Did I at noon today decline to have you interview me during recess?" "Answer. Yes, sir." Do you remember that question being asked and that answer made by you? A. Read that again, please.

Q. "Question. Never by any intimidation. Did I at noon today decline to have you interview me during recess?" "Answer. Yes, sir." Is that right? A. Yes, sir.

Q. "Question. Did I tell you at that time, as I told you before, that all I desired you to do was simply to testify the truth?" "Answer. Yes, sir." Do you remember that question being asked and that answer made by you?

A. I don't remember it just at this time.

Q. Is that a fact?

A. I think he asked that question, yes, sir.

Q. "Question. I don't know whether,—I will go to the other matter. Now, Mr. Lewis, I went through this statement of yours, as you already testified, I went through this statement of yours, and I referred to your statement made in 1905, before you testified

(Testimony of Hiram F. Lewis.)

upon the trial?" "Answer. Yes, sir." "Question. When, and you are familiar with that, and in a way familiar with the evidence you gave last fall?" "Answer. Yes, sir." "Question. You made the statement in your affidavit to the following effect: 'I told Mr. Ruick among other things prior to being placed on the stand as a witness in said case that I owned my land, and showed him tax receipts.' I now read from the affidavit which you made before McDonald which has been produced by counsel as your statement, and you say you have no recollection of having made such a statement as that?" "Answer. I think I told you that I had some tax receipts at home." "Question. But I am speaking about the affidavit now. You say you desire that stricken out of this [880—550] affidavit?" "Answer. Yes, sir." "Question. As not having been said by you?" "Answer. Yes, sir." "Question. The next paragraph. 'I told Mr. Ruick I never made a prior agreement with Dwyer or Mr. Kester, or anyone else.' You ask to have that stricken out also?" "Answer. Yes, sir." "Question. That you didn't say?" "Answer. No, sir." "Question. You never made that statement to Mr. Dwyer?" "Answer. No, sir." Do you remember those questions being asked and those answers being made by you at the trial at Moscow, just after you were cross-examined, with reference to the affidavit?

A. Yes, sir, I think the question was asked.

Q. And you made those answers? A. Yes, sir.

Q. "Question. And the next statement: 'Mr.

(Testimony of Hiram F. Lewis.)

Ruick wanted me to make the statement that Mr. Dwyer looked me up.' Do you recall that or do you withdraw that statement? Do you ask to have that statement withdrawn?" "Answer. Is it marked?" "Question. It is marked with a cross." "Answer. Yes, sir." "Question. Do you want to withdraw that?" "Answer. Yes, sir." Do you remember those questions being asked you at that time and those answers being made by you? A. Yes, sir.

Q. "Question. I understand you to say that this statement reading, 'Mr. Ruick wanted me to take the statement that Mr. Dwyer looked me up,' that that was not true, you want to withdraw that statement as not having been made by you?" "Answer. Yes, sir." "Question. Now this further statement: 'I also state that nothing was said about money being procured from Mr. Kester or the Lewiston National Bank prior to making my declaratory statement, or filing my application to purchase lands.' You also state you desire to withdraw that statement as not having been made?" "Answer. Yes, sir." "Question. Now you say these statements that have been withdrawn by you—" "Answer. Never made." "Question. You never swore to this statement knowingly?" [881—551] "Answer. No, sir." "Question. You never read over this affidavit after it was typewritten?" "Answer. No, sir." "Question. And these statements were never known or made by you?" "Answer. No, sir." Do you remember, at the time that we have been referring to, whether or not those questions were asked you and

(Testimony of Hiram F. Lewis.)

those answers made by you?

A. I don't recall now whether they was or not.

Q. You don't say that they weren't, do you?

A. No, sir.

Mr. GORDON.—That is all.

At this time an adjournment was taken until ten o'clock to-morrow morning. [882—552]

On Tuesday, the 30th day of August, 1910, at ten o'clock A. M., the hearing was resumed.

**[Testimony of Albert James Flood, for
Complainant.]**

ALBERT JAMES FLOOD, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mr. Flood, are you? A. Yes, sir.

The SPECIAL EXAMINER.—Q. What are your initials, Mr. Flood? A. A. J.

Q. A. J.? A. Yes, sir.

Mr. GORDON.—Q. Will you please state your full name? A. Albert James Flood.

Q. Where do you reside, Mr. Flood?

A. At present at Oakesdale, Washington.

Q. Where did you reside in May, 1904?

A. Oakesdale.

Q. Do you remember of filing a homestead entry on the south half of the south half of section 15, in township 38 north, of range 6 east, Boise meridian, at the land office at Lewiston, on May 25th, 1904?

Mr. TANNAHILL.—We object to any evidence

(Testimony of Albert James Flood.)

of the witness in support of either of the actions, upon the ground that it is irrelevant, incompetent and immaterial, the entry of the witness not being involved in either of the actions.

Mr. GORDON.—Answer the question.

A. Well, I filed, but I don't remember the exact date. It was some time during that summer.

Q. Well, are you acquainted with Mr. William Dwyer, a defendant [883—553] in this case?

A. I have met him; yes, sir.

Q. Where did you meet him?

A. In Lewiston.

Q. Will you state the occasion of meeting Mr. Dwyer?

A. I met him first on the street, in regard to a contest that had been entered against this filing that I had made.

Q. This homestead filing?

A. Yes, this homestead filing.

Q. And were you alone, or with someone?

A. No, I was with Williams—Mr. Walter Williams.

Q. Now, state what was said on that occasion?

A. Well, we asked Dwyer about this contest that had been instituted. We had been referred to Dwyer by Mr. West of the land office, to see him in regard to this contest.

Q. Now, who had filed a contest?

A. Well, I understood Mr. West to say that Dwyer had filed a contest, and he stated that he had, or they had, whoever they were, I don't know, and that

(Testimony of Albert James Flood.)

we had no show of winning the contest, and he advised us to drop it and not to appear, and we agreed to relinquish on condition that he would allow us \$50.00 to pay our expenses incurred.

Q. Why did you fix the amount at \$50.00?

A. Well, we didn't fix the amount. He said that is what it would cost him to win the contest.

Q. Now, is that the exact way he said it, or what was the exact language as near as you can remember it?

A. Well, I couldn't say the exact language. That was the gist of it, however.

Q. And was this along in the summer of 1904 that you had this conversation?

A. I think so, yes, sir.

Q. Well, did you see him afterwards about the same matter? [884—554]

A. Yes; I saw him either that evening or the next morning, I am not sure which it was.

Q. Well, did you meet him by appointment the next evening or the next morning? A. Yes, sir.

Q. Or did you just—

A. No; we met him by appointment.

Q. Now, tell about when the appointment was made, and who were present?

A. Well, we were to go with him to the Lewiston National Bank and fix up the relinquishment.

Q. And were you told that you were to see anybody at the Lewiston National Bank?

A. No, not at that time I don't think. I don't remember.

(Testimony of Albert James Flood.)

Q. Well, do you know Mr. William F. Kettenbach? A. I have seen him, yes, sir.

Q. And when you went to the bank did you see Mr. William F. Kettenbach that day?

A. I think so, yes, sir.

Q. Well, now, state what happened when you went to the Lewiston National Bank that day. Who did you meet there?

A. Well, there were two or three gentlemen in there that I didn't know a couple of them, anyway; I didn't know who they were, but I think that Kettenbach was there, and Dwyer and Walter Williams, and we signed the relinquishment papers, and this \$50.00 was to be put in escrow in the Lewiston National Bank until the relinquishment was accepted, as I understood it, or until they had filed on this land some way.

Q. And do you know the date that you signed the relinquishment?

A. No, I couldn't state that—not the exact date.

Q. Did you ever take up any other homestead?

A. No, sir, not in the United States. [885—555]

Q. Did you get any money the day that you signed that relinquishment? A. No.

Q. In what part of the Lewiston National Bank was this conversation?

A. It was in a room in the rear of the bank, I think.

Q. And did you tell Mr. Dwyer that you would relinquish for a certain amount when he told you he would give you \$50.00? A. No, I think not.

(Testimony of Albert James Flood.)

Q. Did you tell him how much expense you had been put to in the homestead, and that you wanted to get that money out of it?

A. Well, I told him we had been out quite a bit more than \$50.00 on it.

Q. Did you tell him how much?

A. I don't know that I did. I might have. I didn't know exactly myself.

Q. Was Mr. Williams present at the bank when you had this conversation? A. Yes, sir.

Q. How long after that was it that you got your \$50.00? A. Several weeks, I think.

Q. And who gave it to you?

A. It was mailed to me.

Q. By whom was it mailed?

A. Well, it was a Lewiston National Bank check or draft of some description.

Q. Do you know who it was signed by?

A. No, I don't.

Q. Do you know where the check is?

A. I cashed it at the Commercial State Bank in Oakesdale, Washington.

Q. Now, do you know what they were holding that relinquishment [886—556] for? Did they tell you why they didn't settle it right away?

A. Well, there was something said about this way, as they mentioned themselves, whoever they were, that we had no show of beating them; that they would file scrip on it; and I don't remember that they mentioned anybody in particular. They may have.

(Testimony of Albert James Flood.)

Q. But you don't understand my question. Why were they to hold this relinquishment in escrow?

A. Well, I understood that they were to hold it until they filed scrip on it—until they had got a filing on this particular land.

Q. Did they say they were going to file on it by scrip? A. I understood that, yes, sir.

Q. Well, I mean from anything that was said did you understand that; or was it just your own impression?

A. Oh, no; I think that was stated, as near as I can recollect.

Q. Who said that? A. Dwyer.

Q. And did he state that in the presence of the others? A. Yes, sir.

Mr. GORDON.—Now, we will read this: It is stipulated by and between the parties that Albert J. Flood filed homestead entry No. 10,485 in the land office at Lewiston, Idaho, on February 24th, 1904, embracing the south half of the south half of section 15, township 38 north, of range east, Boise Meridian; that William Dwyer filed a contest against said entry May 25th, 1904, and that said entry was cancelled by relinquishment July 11th, 1904, which relinquishment was signed by the witness Albert J. Flood.

Mr. TANNAHILL.—The defendants severally object to the evidence of the filing of the homestead and the filing of the contest and the cancellation of the entry by relinquishment, upon the ground that it is irrelevant and immaterial.

(Testimony of Albert James Flood.)

Mr. GORDON.—It is further stipulated by and between the parties [887—557] to these causes that Walter Williams filed homestead entry No. 10,484, at the land office at Lewiston, Idaho, on February 24th, 1904, embracing the north half of the north half of section 15, township 38 north, of range 6 east, Boise meridian; that a contest was filed against said entry by William Dwyer May 25th, 1904; that said entry was cancelled by relinquishment signed by Walter Williams August 23d, 1904.

Mr. TANNAHILL.—The defendants severally object to the evidence, however, upon the ground that it is irrelevant and immaterial.

Mr. GORDON.—Take the witness.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Flood, who did you first talk with regarding your evidence; regarding the fact that you was wanted as a witness, or what you would testify to?

A. Mr. O'Blennis.

Q. When did you talk with Mr. O'Blennis?

A. Well, some time last winter, at Oakesdale.

Q. And do you remember the conversation you had with Mr. O'Blennis?

A. Well, something on the same lines as the testimony here to-day.

Q. Do you remember that Mr. O'Blennis asked you if Mr. Dwyer didn't use the word "we" instead of the word "I"? A. No, I don't think so.

Q. Are you sure of that, Mr. Flood?

A. I am not sure of the conversation—not that

(Testimony of Albert James Flood.)

sure that I could say that.

Q. Well, don't you remember that Mr. O'Blennis asked you—if he didn't use the word "we" instead of the word "I"? A. I don't remember.

Q. He may have done that?

A. Yes, sir, he may have.

Q. I noticed in your evidence this morning you said first Mr. [888—558] Dwyer says "I," and then you changed it—"I have filed a contest"—and then you changed it to, you said, I, he, or they.

A. No. Well, I understood that Mr. Dwyer filed the contest. I was informed that at the land office.

Q. And when he was speaking of the filing of the contest, why he told you that he had filed the contest?

A. No. I understood there was more than one in it at the time.

Q. Well, Mr. Dwyer didn't tell you that there was more than one in it?

A. Well, he didn't mention any names that I remember, but as I understood it he—my understanding of the matter was that there was somebody else besides him interested in the contest.

Mr. TANNAHILL.—The defendants move to strike out all of the witness' evidence relative to his understanding, upon the ground that it is irrelevant, incompetent and immaterial, and it is a conclusion of the witness and not a statement of fact.

Q. Now, then, you and Mr. Dwyer went to the Lewiston National Bank, you say? A. Yes, sir.

Q. Now, who told you that it was intended to file

(Testimony of Albert James Flood.)

scrip on this land?

A. Why, Dwyer, if I am not mistaken.

Q. Where did he tell you that?

A. On the street.

Q. Are you sure he told you he intended to file scrip on that? A. Yes, sir.

Q. Do you know whereabouts it was on the street?

A. Oh, somewheres on this street here; I don't know exactly where it was.

Q. He didn't tell you that anyone else was going to file scrip on it, did he?

A. Not that I remember of; no, sir. [889—559]

Q. But he told you that he was going to file scrip on the land, and as soon as he could get the scrip filed he would pay you the money, did he?

A. Something of that nature; yes, sir.

Q. And the relinquishment was deposited in escrow with the Lewiston National Bank, and the amount was to be paid into the Lewiston National Bank for you whenever Dwyer took up the relinquishment; is that right?

A. Well, I don't know as that was exactly it. The relinquishment and the money was to have been held in escrow until this filing had been secured.

Q. But whenever Dwyer took out the relinquishment, why then the money was to be sent to you?

A. Yes, sir.

Q. And Dwyer deposited the money there with the relinquishment? A. I don't know.

Q. Well, you deposited the relinquishment?

A. Yes, sir.

(Testimony of Albert James Flood.)

Q. And Dwyer deposited the money?

A. I don't know who put up the money. Somebody there put the money with the bank.

Q. Anyway, the relinquishment and the money was deposited in the bank together?

A. That is the way I understood it.

Q. And when Dwyer took out the relinquishment the money was to be sent to you?

A. Well, that is what I understood by escrow. It was to be put there until certain conditions were fulfilled, and then I was to get the money.

Q. Now, what were the conditions?

A. Well, that's all I know; until they had secured this filing of some description—this scrip. [890—560]

Q. Well, the relinquishment wasn't to be taken out of there and delivered to Dwyer until the money was sent, was it? A. No, I don't think so.

Q. Then the condition was that when Dwyer took the relinquishment out the money was to be sent to you? A. Yes.

Q. And so far as you know that arrangement was carried out? A. Yes, sir.

Q. Now, didn't Dwyer tell you that you couldn't win out? A. Yes, sir.

Q. On that contest, because you never had established a *bona fide* residence upon the land?

A. Yes, sir.

Q. And you had just come down from Oakesdale a few days before you went to the timber; is that right?

(Testimony of Albert James Flood.)

A. Well, I wasn't in the timber very long. I came down from Oakesdale and went in and located.

Q. Do you remember that you filed an affidavit with your homestead application—had an affidavit drawn up and filed that?

A. Well, we made an affidavit that we had a cabin on the place—improvements. I personally didn't build the cabin, but I paid the locator.

Q. You don't know whether the cabin was ever built or not, do you?

A. Well, I wasn't in there to see it, so I couldn't say.

Q. You couldn't say whether it was or not?

A. I didn't see it.

Q. But you made an affidavit that you had a cabin on the place?

A. There was a foundation laid for a cabin.

Q. Well, didn't your affidavit state that you had a cabin on the place?

A. Well, I understood that I had, yes, sir. [891—561]

Q. And that you had resided there for more than 60 days? A. I don't remember that, no, sir.

Q. Isn't it a fact that you had to make that affidavit in order to file before the State's right of 60 days had expired? A. I don't know.

Q. You don't know whether that is a fact or not?

A. No, sir.

Q. And you don't know whether your affidavit stated that you had been residing there for more than 60 days? A. No, sir.

(Testimony of Albert James Flood.)

Q. As a matter of fact, you had not resided there 60 days, had you? A. No.

Q. You had only stayed overnight there?

A. That's all.

Q. And you don't know whether you stayed on your claim or Walter Williams's?

A. Oh, yes; I knew the numbers of the land where I was in.

Q. Well, whose place did you stay all night on, your place or Walter Williams's?

A. I stayed on mine. I didn't go into the timber at the same time that Walter Williams did.

Q. When did Walter Williams go in?

A. He went in a week or ten days following me.

Q. The lines were run before that, were they?

A. The survey?

Q. Yes, the survey?

A. Oh, yes, the survey had been run.

Q. You don't know who run the survey, do you?

A. No, I don't.

Q. Don't you know that Dwyer had cruised out this claim and run the lines before you ever went into the timber? [892—562]

A. I don't know that; no.

Q. You don't know whether he did or not?

A. No.

Q. Don't you know that Dwyer had cruised this timber, run the lines, and estimated the timber, for the purpose of locating another man on the claim, and this man who located you (Warren Lawrence) simply went in there and attempted to appropriate

(Testimony of Albert James Flood.)

the location? A. No, I don't know that.

Q. That might have been the case?

A. It may have for all I know.

Q. You paid Warren Lawrence a location fee, did you? A. I was to pay him \$100.00.

Q. But you didn't pay him? A. No, sir.

Q. Why didn't you pay him?

A. We wasn't to pay him unless we got the filing.

Q. Well, you got the filing, didn't you?

A. Well, but it was contested.

Q. And you didn't have to pay him until you seen whether or not you was going to be able to hold the land? A. No, sir.

Q. You expected possibly that there would be a contest, didn't you?

A. No. I was told that we could change our filing to a stone and timber filing and buy the land.

Q. Oh! Then you intended to change your filing to a stone and timber? A. Yes, sir.

Q. That was your intention? A. Yes, sir.

Q. But you filed your homestead on it to defeat the State's prior rights? [893—563]

A. We were told by Mullan over here that that is the way to fix up the papers.

Q. And didn't he tell you that that was the only way to defeat the State's rights?

A. Well, there seemed to be several hundred around Mullan's, and there wasn't much said only making out the papers.

Q. But he might have told you that?

A. Well, he might have.

(Testimony of Albert James Flood.)

Q. And all you know is what is in your affidavit of prior settlement, that you had a cabin on the land?

A. Yes, sir.

Q. Well, as a matter of fact you don't know whether you had a cabin on the land or not?

A. I wasn't in there.

Q. Now, don't you know that between the time you left your claim and when you filed your claim, that the locator would not have had time to build a cabin? A. He certainly would.

Q. How long a time would he have had?

A. Oh, it was several weeks before I came from the timber to Lewiston.

Q. Well, didn't you say you came right back from the timber?

A. Well, I find I was mistaken. I went back to Oakesdale. When I came down to Lewiston to file I had the intention of going into the timber again, but I got word at Potlatch to come to Lewiston and file.

Q. Then your evidence that you had come right direct from the timber to Lewiston is wrong, is it?

A. That is a mistake, yes, sir. I don't know how much time elapsed, but it was quite a little time. Walter Williams went in there with a party in the meantime, between the time I came out and the time I filed. [894—564]

Q. Now, when you testified in Boise: "Now, when was you on this claim?"—reading from page 324 of the record of the case of the United States against Kester, Kettenbach and Dwyer, held at Boise, Idaho,

(Testimony of Albert James Flood.)

on February 19th, 1910,—which you answered: “Just previous to filing.” “Question. How long before you filed?” “Answer. Oh, we came right out of the timber, to Lewiston.” “Question. How is that?” “Answer. We came right out of the timber to Lewiston.” “Question. You came right out of the timber to Lewiston?” “Answer. Yes, sir.” “Question. And who was with you?” “Answer. Well, there was Walter Williams, and a man by the name of Lawrence—two named Lawrence—two men named Lawrence—and a man named Brown, from Oakesdale, Washington, was along.”

A. Yes; I was mistaken in regard to that. I went to Oakesdale between the time that I came out of the timber and filed here in Lewiston.

Q. Now, how did you come to describe all of those men, and the route you went, and go into details about it at that time?

A. Well, there was two parties went in there, and Williams was under the impression that he went in when I did, and that is how I got that mixed up. But Brown, I know that Brown and Lawrence—old man Lawrence—and his son went in the time that I did. I had given up ever hearing anything of the matter again after I relinquished, and had been away for six or seven years and hadn't heard anything about it, in fact, and had been in Canada in the meantime, and there are lots of details, of course, that I can't remember.

Q. How did you happen to come to Lewiston the second time?

(Testimony of Albert James Flood.)

A. Well, I got notice when I would be ready to file on these claims. I was notified by the man that located us that the land office would be open for filings on this land on a certain day.

Q. Now, when were you on the land?

A. I don't remember the exact date. I think it was some time in February. [895—565]

Q. And when did you leave Oakesdale?

A. I left on the N. P. train. I don't remember the exact date.

Q. Was it in February you left Oakesdale?

A. When we went into the timber?

Q. Yes.

A. I think so. I ain't positive. It was in the winter, anyhow; there was snow on the ground.

Q. And which way did you go?

A. I went to Potlatch Junction and I took the train to Greer, and went to Pierce City from Greer on horseback.

Q. And where did you go from Pierce City?

A. I went out into where the claim is.

Q. How did you succeed in reaching the claim in February? A. I went on foot.

Q. Did you go on snowshoes?

A. No, sir; we didn't; the snow was crusted.

Q. How long was you away? How long was you making that trip from Pierce City to the claim?

A. About three days, in and out.

Q. And when you testified that it was April you was on the claim, at this trial in Boise, you was mistaken, was you?

(Testimony of Albert James Flood.)

A. I am not sure about the dates at all. I couldn't say the exact date.

Q. It might have been April that you was on this claim?

A. No; it wasn't; it was earlier; there was snow on the ground.

Q. Then you were mistaken when you testified in Boise that it was April, were you? A. Yes, sir.

Q. Then how long do you say you was making the trip from Pierce to the claim?

A. About three days, in and out.

Q. About three days, in and out? [896—566]

A. Yes, sir.

Q. How far is it from Pierce?

A. I have no idea. I suppose 25 or 30 miles.

Q. And where did you go after you reached Pierce City? A. Back to Greer.

Q. And then where did you go?

A. I went to Oakesdale.

Q. Who was with you when you went to Greer?

A. Brown and—I am not sure—I think one of the Lawrences came out, too—yes, I am sure they did.

Q. Where did you stop at Pierce?

A. I don't know the name of the place; it was a hotel there; some fellow, I think they called him "Colonel," that ran the hotel—Colonel something.

Q. Now, how long did you stay on your claim?

A. I stayed there all night, and possibly part of the next day.

Q. Are you sure you didn't stay any longer?

A. No, I don't think so. I might have stayed all

(Testimony of Albert James Flood.)

day. I don't remember just exactly when we started out from there.

Q. Now, where did you go after you left Greer?

A. Going in?

Q. No—coming out. A. I went to Oakesdale.

Q. Did you go by train to Oakesdale?

A. Yes, sir.

Q. Why didn't you come on to Lewiston?

A. Well, the land office wasn't ready to accept filings on this land at that time.

Q. And you came down the first day that the land office was open? A. Yes, sir.

Q. That the land was open for filing?

A. Yes, sir. [897—567]

Q. And you made your filing at that time?

A. Yes, sir.

Q. Now, how long did you stand in line before you was able to file?

A. We were here a couple of days—two or three days.

Q. The homestead filings were accepted before the stone and timber filings, were they?

A. I believe so, yes; the homestead filings came first.

Q. And that was quite a line-up, wasn't it?

A. Yes, there was a big crowd there.

Q. About how many were in line?

A. There seemed to be several hundred.

Q. As a matter of fact, that was the biggest line-up that was ever known before the land office, was it not? A. I don't know.

(Testimony of Albert James Flood.)

Q. The biggest that you know of?

A. It was the only one that I was ever in.

Q. Now, isn't it a fact that you filed a homestead on this claim for the purpose of getting ahead of the stone and timber claims, and for the purpose of defeating the State's 60 days' prior right?

A. Well, I understood it wasn't to defeat the stone and timber, but to defeat—to get ahead of the State on the filing.

Q. That was your understanding?

A. Yes, sir.

Q. And you intended afterwards to change it to a stone and timber?

A. That is what I was informed, yes, sir.

Redirect Examination.

(By Mr. GORDON.)

Q. Do you remember the date of the line-up that you referred to?

A. I couldn't remember that. It could easy be found out, though. [898—568]

Q. Well, I know; but was it the date that you filed your homestead entry?

A. That was the day of the line-up.

Q. It wasn't the date that you relinquished?

A. Oh, no.

Q. Now, from Mr. Tannahill's question I think it appears that the money was deposited with the relinquishment. A. Well—

Q. When it was put in escrow, do you know whether it was or not, or whether the relinquishment was deposited, and when that was used you were to

(Testimony of Albert James Flood.)

get a certain amount of money?

A. Well, the way I understood it was that the money was to be put in escrow until Mr. Dwyer had secured his filing, as I understood it at that time.

Q. And you didn't know who was to put the money up, or anything of the kind?

A. No, sir; I didn't know anything about it at all.

Q. Now, you have used the statement that it was your understanding that there were others interested in this contest besides Mr. Dwyer. I will ask you whether there was anything said by Mr. Dwyer that gave you that understanding; if so, what was it?

A. Well, I couldn't state exactly what our conversation was; but I just understood that there was more than Mr. Dwyer interested in those proceedings, was all.

Q. Now, from whom did you get that understanding? A. From Mr. Dwyer.

Q. Now, could you remember anything that was said that led you to believe that?

A. I can only remember the general trend of the conversation. I couldn't remember any particular part of it at all.

Mr. TANNAHILL.—The defendants renew their motion to strike out the statement of the witness as to what his understanding was, on the ground that it is immaterial, a conclusion, and not a statement of fact. [899—569]

Mr. GORDON.—Q. Was it because he used the plural pronoun in referring to those matters?

Mr. TANNAHILL.—We object to that as leading

(Testimony of Albert James Flood.)

and suggestive.

WITNESS.—I couldn't state positively just what language he did use.

Mr. GORDON.—Q. No, I know; but did he use the word "I," or "we," or "they," or what?

A. Well, I couldn't say that, either, positively—just the general understanding.

Mr. TANNAHILL.—The defendants move to strike out the evidence of the witness and the statement of the witness as to his understanding, upon the ground that it is a conclusion, and not a statement of fact.

[Testimony of Walter Williams, for Complainant.]

WALTER WILLIAMS, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Walter Williams, are you?

A. Yes, sir.

Q. Where do you reside, Mr. Williams?

A. I am at Oakesdale now.

Q. Where did you reside in February, 1904?

A. I think I was working on the boat here, on the steamer.

Q. And you made a homestead filing at the land office at Lewiston in February, 1904, did you not?

A. Yes, sir, I think it was. I don't remember the exact date, [900—570] but it was about that time.

Q. And did you perfect that entry? A. No, sir.

Q. Why not? A. Well, we relinquished it.

(Testimony of Walter Williams.)

Q. Well, did anything happen before you relinquished it?

A. Well, we were notified that there was a contest filed against the claim.

Q. Who notified you of that?

A. I think it was Mr. West, the gentleman in the land office.

Q. And you came down to the land office?

A. Yes, sir.

Q. With whom did you come?

A. Why, Mr. Flood.

Q. Albert J. Flood, who has just testified?

A. Albert J. Flood; yes, sir.

Q. Well, state what happened while you were down here on that trip.

A. Well, I think Mr. West referred us to a gentleman—Mr. Dwyer.

Q. Who is Mr. West?

A. He was there in the land office—from the land office—Receiver, I believe.

Q. He referred you to Mr. William Dwyer?

A. Yes, sir.

Q. And did you see Mr. Dwyer? A. Yes, sir.

Q. Well, state what took place at the time that you saw him.

A. Well, I believe he said that we couldn't prove up on the land, if I remember right. I think he said the railroad had filed scrip on the land.

Q. Did he mention the railroad? [901—571]

A. The N. P., and that it would cost him—I believe he was going to contest it—and that it would cost him

(Testimony of Walter Williams.)

\$50.00 to contest it, and he was willing to let us have that much for our expenses.

Q. Your expenses on what?

A. The expenses of going out to see the land.

Q. And what were you to do to get that \$50.00?

A. Relinquish.

Q. Well, where was this conversation?

A. I believe we first met him on the street.

Q. And did you accept his proposition then, or what happened?

A. Well, we talked it over, and then I believe we came to the conclusion that it was the best thing we could do.

Q. And did you relinquish that day or some other time? A. I think it was the same day.

Q. And where did you go to make out the relinquishment?

A. We went to the office there by the bank—of the Lewiston National Bank.

Q. Were you in the bank at any time?

A. I don't think we were in the main bank. We went to the office, I think.

Q. What office?

A. I think it was their private office.

Q. Whose private office? A. The bank's.

Q. And who did you see at that place?

A. Mr. Dwyer and Mr. Kettenbach.

Q. What Kettenbach? A. W. F. Kettenbach.

Q. And what conversation took place at that time?

A. I don't remember exactly, but I think that he told us like Mr. Dwyer, that we could get our right

(Testimony of Walter Williams.)

back, but we didn't have no chance to make the final proof on the claim. [902—572]

Q. And did you relinquish then? A. Yes, sir.

Q. And who was present besides you and Mr. Kettenbach and Mr. Dwyer?

A. I don't remember for sure whether anybody was—there might have been.

Q. Was Mr. Flood present?

A. Oh, yes, Mr. Flood, but nobody else.

Q. Did you get any money when you relinquished?

A. No, sir. I think they sent us the money after the papers were made out.

Q. Now, what was told you on that occasion about being able to get your right back? What was that?

A. Well, they seemed to think we could get it back. I don't remember exactly the conversation. That is the way we understood it.

Q. Well, what was this right that you were to get back? To file on another homestead?

A. Yes, sir—our homestead right, to file on another homestead.

Q. That that would not exhaust your right?

A. Yes, sir. That is the way we understood it.

Mr. TANNAHILL.—Mr. Gordon, is this one of the entries—the land that this man filed on and relinquished—is it one of the entries which is involved in either of the suits?

Mr. GORDON.—I think it is, but I can't tell you for certain.

Mr. TANNAHILL.—For the purpose of saving the record, for the reason that I am not sure that this

(Testimony of Walter Williams.)

entry is involved in either suit, the defendants severally object to any further evidence of the witness in support of either of these actions, upon the ground that it is irrelevant, incompetent and immaterial, the entry of the witness, in so far as I am able to learn at the present time, is not involved in either of the actions. [903—573]

Mr. GORDON.—Q. Were you advised by either of these parties to go and see a lawyer as to whether or not your relinquishment of that kind would put you in a position so that you could file on another homestead entry?

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Answer the question.

A. Why, no. Mr. Dwyer referred us to a lawyer if we wanted to see about it, but that's all, I think. I forget the lawyer's name. There was two of the gentlemen.

Q. And where was that, the first time you met him, or was that at the bank?

A. I think that was after we had relinquished.

Q. And how long after you signed the relinquishment did you receive the \$50.00?

A. Well, sir, I couldn't say exactly. I was working on the boat, and I am not sure. I think, though, they sent it through the mail—a check.

Q. Do you know whose check it was?

A. No, sir, I don't remember.

Q. And you cashed the check, did you?

A. Yes, sir, if it was a check; I think it was. I

(Testimony of Walter Williams.)

know I got the money.

Q. Do you know on which bank the check was drawn? A. No, sir, I couldn't say.

Mr. GORDON.—Counsel for the Government make demand on the defendants that they produce the check paid to Mr. Flood and the witness Williams, in payment of the relinquishments.

Mr. TANNAHILL.—Counsel for the defendants states that they do not know whether they have that particular check or those checks or not, but will make search for them, and if they have them and can find them I will be glad to produce them; and counsel for the defendants asks Mr. Dwyer, who is present now, to make search for those checks and ascertain [904—574] whether or not they can be found.

Cross-examination.

(By Mr. TANNAHILL.)

Q. When did you go upon this land, Mr. Williams?

A. Well, sir, I couldn't say the exact date; it was just a little while before we filed.

Q. How long before you filed?

A. I couldn't say exactly. It couldn't have been over a couple of weeks, though, I don't think.

Q. And who was with you on the land?

A. That is the gentleman that located us, and several other men.

Q. Do you remember his name?

A. The locator?

Q. Yes. A. Mr. Lawrence.

Q. And who else was with you?

A. Why, one of his sons, and his name was

(Testimony of Walter Williams.)

Lawrence, and a man named Conrad, and there was—I believe that there was some other—I believe there was two of his boys went with us—two of the Lawrences.

Q. And how long was you making the trip from Pierce City to the claim? You went to Pierce City, did you? A. Yes, sir.

Q. How long was you making the trip from Pierce City to the claim?

A. I think we camped one night on the road was all, and got in the next day.

Q. And how did you get in from Pierce City?

A. We walked.

Q. Did you go on snowshoes?

A. No, sir. We didn't have no snowshoes.

Q. And did you do any work on the claims?

A. No, sir, not while we was there. [905—575]

Q. Was there any improvements on the claims?

A. Well, this gentleman—this locator—he was going to start—he started to put up our cabins. We hired him to put up a cabin. He just had the foundation in.

Q. And there was no cabin on the claims when you left? A. No, sir.

Q. Did the locator come back to Pierce City?

A. No, sir.

Q. He stayed there? A. Yes, sir.

Q. And then you came direct to Lewiston?

A. Yes, sir.

Q. And you found out that in order to get your fling you had to make an affidavit that you had been

(Testimony of Walter Williams.)

on the land so many days, and that you had certain improvements on the land, and so on?

A. That was when we filed?

Q. Yes. A. I don't remember.

Q. Don't you know that the stone and timber people, or the homestead people, had the prior right over the stone and timber people, and that the State had 60 days' prior right over everybody unless it was bona fide settlers under the homestead law?

A. No, sir, I didn't know it.

Q. Didn't you understand that you had to make that affidavit and file a homestead, for the purpose of defeating the State's prior right?

A. No, sir, I didn't understand it that way.

Q. Didn't Mr. Mullan, the man that made out your papers, tell you that? A. I don't think so.

Q. Didn't Mr. Flood tell you that?

A. I don't remember, if he did. [906—576]

Q. But in order to get a filing at that time you knew you had to file a homestead, didn't you?

A. Yes, sir; that's what we were told.

Q. And you intended to change it later, and file a stone and timber?

A. I don't remember. I don't think so.

Q. Now, you didn't intend to go out there and live, did you? A. Well,—

Q. To make a farm out of that?

A. I don't hardly know.

Q. Well, you know you didn't, don't you?

A. It would be a pretty hard proposition, I guess it would have been.

(Testimony of Walter Williams.)

Q. Well, don't you know you was taking it for the timber?

A. Well, we was taking it because we had a right, and had a right to use.

Q. But it was for the timber that you was taking the land?

A. Well, it might have been as much for that as for the land.

Q. And it wasn't very good farm land, was it?

A. It wasn't very good then; there was snow on the ground then.

Q. And you expected to relinquish it later on and file a stone and timber, didn't you?

A. No, sir, I don't remember it that way.

Q. You expected to handle yours the same way that Flood was handling his, didn't you?

A. Well, likely. We didn't talk. I don't remember having any conversation with him about filing a stone and timber on it.

Q. Did you know that in order to get your filing at that particular time you had to file a homestead? You understood that, didn't you? A. Yes, sir.

Q. And that was the reason you filed a homestead? [907—577] A. I suppose so.

Q. And that was the reason you made your affidavit of prior settlement?

A. I don't remember making no affidavit. I know that they said we had to file a homestead to file at all.

Q. And who said that?

A. There in the land office, and I think the lawyer—the gentleman that made out the papers.

(Testimony of Walter Williams.)

Q. Do you remember why they told you you had to file a homestead if you filed at all?

A. No, sir, I don't remember.

Q. Didn't they tell you because the 60 days' prior right of the State had not expired?

A. I don't remember, if they did.

Q. Now, how long before you filed on this land was it that you was upon the land?

A. Well, sir, I couldn't say exactly. I don't think it was over a couple of weeks; I ain't sure, though.

Q. Did you come direct from the land of Lewiston?

A. Yes, sir; I went back to work on the boat.

Q. And you had only been on the land once?

A. That was all.

Q. And stayed over night, or camped on the place one night?

A. I ain't sure whether we stayed one or two nights; not over two, anyway.

Q. And at the time you didn't know whether there was a cabin on the claim or not?

A. Well, there was supposed to be. They had started to build it, and we paid for having it built.

Q. But if the facts were that there was no cabin on the claim, why of course you didn't know? [908—578]

A. No, sir. We was never back there since.

Q. All you know about it was that you had hired the locator to build a cabin?

A. Yes, sir, and he had started to build it.

Q. Now, didn't Dwyer tell you that there was no cabin on the claim when he talked with you about this

(Testimony of Walter Williams.)

contest? A. Mr. Dwyer?

Q. Yes?

A. I don't remember. He might have.

Q. Didn't he tell you that there were no improvements on the claim at all? A. I don't remember.

Q. Didn't he tell you that he had cruised out this claim and had run out the lines and had intended to locate other people on the claim?

A. Well, sir, he might have, but I don't remember him saying it.

Q. Now, you say that you met Mr. Kettenbach when you signed this relinquishment?

A. Yes, sir.

Q. Do you know which Kettenbach that was—Otto Kettenbach or W. F. Kettenbach?

A. W. F. Kettenbach was in the office, but I am not sure whether the other gentleman was in there or not. He might have been.

Q. Otto—the man you met was quite a light-complexioned man, wasn't he?

A. No, sir, I don't think so.

Q. Did he take your acknowledgment to this relinquishment?

A. Well, sir, I can't say for sure whether the other gentleman was in there or not. I know Mr. Dwyer and this other Mr. Kettenbach was there, and the other might have been in there.

Q. Was the Mr. Kettenbach that you met there at the cashier's window?

A. We wasn't in the bank at all. [909—579]

Q. You wasn't in the bank at all? A. No, sir.

(Testimony of Walter Williams.)

Q. That is when you deposited this relinquishment in escrow that you met W. F. Kettenbach, or that you met one of the Kettenbachs?

A. Yes, sir; it was in the office—I think it was the office that belonged to the bank. I am not sure about that. It was right next to the bank.

Q. Right next to the bank?

A. Yes, sir, in the same building.

Q. In the same building? A. Yes, sir.

Q. Was it in a room? A. Yes, sir.

Q. Which side of the bank was it on?

A. I think it was on the far side from this Main Street.

Q. On the north side?

A. Yes, sir, I suppose so.

Q. And what Kettenbach told you was that Kettenbach told you you could get your right back?

A. Well, I don't know if he said for certain, but he said he thought we could.

Q. And you delivered this escrow paper—this relinquishment—to W. F. Kettenbach, did you?

A. No, sir—Mr. Dwyer and him together.

Q. Well, you deposited that in escrow in the Lewiston National Bank? That was your intention, wasn't it? A. Yes, sir, I suppose.

Q. And the money was deposited with it, and when Mr. Dwyer took up that relinquishment that money was to be sent to you?

A. Yes, sir, I think that is the way we understood it.

Q. And he wasn't to get the relinquishment out of

(Testimony of Walter Williams.)

the bank until the money was sent to you, or it was to be done at the same time— [910—580] simultaneously. A. I suppose so, yes, sir.

Q. And that is all the business you had with W. F. Kettenbach regarding this transaction?

A. Yes, sir, that was all.

Q. And you are not sure whether it was W. F. Kettenbach or Otto Kettenbach?

A. I am sure Mr. W. F. Kettenbach was in there, but I am not sure whether the other gentleman was there or not. He might have been there.

Q. Now, you say that Dwyer said that you could not prove up on the claims because the N. P. Railroad Company had filed scrip on it. Now, wasn't you mistaken about him saying that the N. P. Railroad Company had filed scrip on it?

A. No, sir; that is the way I understood him.

Q. Didn't you testify at Boise that he told you the N. P. Railroad Company was going to file scrip on it?

A. I think I said they had or were going to file.

Q. They had or were going to file, and didn't he tell you that you couldn't prove up on it—that you couldn't hold it because you had no improvements on the land?

A. I don't remember him saying that.

Q. And because that the affidavit that you had filed to shut off the prior rights of the State was false? Didn't he tell you that?

A. I don't remember.

Q. He might have told you that?

(Testimony of Walter Williams.)

(No answer.)

Q. He might have told you that?

A. He might have, yes, sir.

Q. In fact, after you found out that there was no cabin on your claim, and that your affidavit had been examined, you found out that that affidavit wasn't true, didn't you? [911—581] A. No, sir.

Q. You didn't find that out?

(No answer.)

Q. Did you read that affidavit over before you signed it?

A. I suppose I did. I don't remember now what was in it.

Q. Did you remember it at the time you talked with Mr. Dwyer?

A. Well, sir, I can't say whether I did or not.

Q. Did he call your attention to that affidavit?

A. I don't remember him doing so.

Q. I believe you said you got \$50.00 for relinquishing the claim?

A. No, sir; we got the \$50.00 to pay for our expenses. That is what he gave it to us for. He said he couldn't pay for the relinquishment. He just paid us that for our expenses.

Q. I see. You have never tried to file an additional entry, have you? A. No, sir.

Q. As a matter of fact, you know that you could file an additional entry if you would find a tract of land that you wanted to take up, do you not?

A. That I could?

Q. Yes.

(Testimony of Walter Williams.)

A. No, sir; I ain't sure, whether I could or not.

Q. And you are not sure whether you couldn't?

A. No, sir. I never tried to file one.

Q. And you don't know whether Mr. Dwyer gave you wrong advice regarding that, do you?

A. No, sir.

Q. So far as you know, his advice was correct?

A. So far as I know; yes, sir.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Williams, you used the expression that when you had that [912—582] conference or conversation with Mr. Dwyer and Mr. William F. Kettenbach—W. F. Kettenbach—that you were not in the bank. Now, what did you mean by that?

A. I think we were in that room in the private office. I suppose it is connected with the bank.

Q. Is it on the first floor of the bank building?

A. Yes, sir.

Q. You meant that that conversation did not take place in the part of the bank where they had the windows and the counters and such things and where they transacted their business? A. No, sir.

Q. This man that you say was there by the name of William F. Kettenbach is the same gentleman that you saw at the trial as one of the defendants at Boise? A. Yes, sir.

Q. In February last, wasn't he? A. Yes, sir.

Q. And you pointed him out from the stand then, didn't you? A. I believe so.

Mr. GORDON.—It is stipulated that the witness

(Testimony of John E. Nelson.)

Williams is the same Walter Williams concerning which the stipulation was made this morning, and who made the homestead entry concerning which a stipulation was entered into this morning.

Mr. TANNAHILL.—Yes; all right. [913—583]

[**Testimony of John E. Nelson, for Complainant.**]

JOHN E. NELSON, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is John E. Nelson? A. Yes, sir.

Q. Where do you live, Mr. Nelson?

A. 508 Sixth Avenue.

Q. In Lewiston, Idaho? A. Yes, sir.

Q. How long have you lived at Lewiston?

A. Twelve years.

Q. Are you a married man? A. Yes, sir.

Q. What was your occupation in February, 1903?

A. Salesman for the Lewiston Mercantile Company.

Q. Do you remember taking up a timber and stone claim under the timber and stone act in 1903?

A. I have a faint recollection of it.

Q. I show you timber and stone lands sworn statement, dated February 24th, 1903, signed John E. Nelson, and ask you if that is your signature to that paper? A. Yes, sir.

Q. And whether you filed the same in the land office about the date it bears?

A. As near as I remember, yes. That is my signa-

(Testimony of John E. Nelson.)

ture, without any doubt.

Q. I show you nonmineral affidavit of the same date, and ask you if you signed that paper?

A. Yes, sir; that is my signature.

Q. I show you the testimony of John E. Nelson, given at the [914—584] final proof, May 22d, 1903, and ask you if that is your signature to that paper? A. Yes, sir.

Q. I show you the cross-examination of John E. Nelson, taken at the same time, and ask you if that is your signature? A. Yes, sir.

Q. Mr. Nelson, who first talked to you about taking up a timber claim?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to taking up a timber claim, so far as it relates to bills 388 and 407, upon the ground that the entry of the witness is not involved in either of these actions.

Mr. GORDON.—Answer the question.

A. I didn't understand that.

Said question was thereupon repeated by the Reporter.

A. Why, Mr. H. R. Miller, deceased.

Q. What was Mr. Miller's business?

A. He was in the cigar business.

Q. And was he alone, or was he associated with someone? A. At that time he was alone.

Q. Did he afterwards have a partner in business?

A. Yes, sir.

Q. Who was it? A. Van Robertson.

Q. And how long after that did Mr. Robertson go

(Testimony of John E. Nelson.)

in business with him?

A. Well, I'm sure I can't remember.

Q. Well, now, what was this conversation between you and Mr. Miller with reference to taking up a timber claim?

Mr. TANNAHILL.—We object to that upon the ground that it is immaterial and hearsay, and not in the presence of the defendants or either of them.
[915—585]

Mr. GORDON.—Answer the question.

A. Well, in detail I couldn't begin to remember the conversation or what brought it about.

Q. Well, you knew he kept a cigar-store?

A. Yes, sir, I knew that.

Q. And wasn't in the timber business?

A. I knew that very well.

Q. Now, state as near as you can what he said that induced you to take up a timber claim.

A. Well, he was living up at my house at the time, and casually mentioned the fact that he anticipated taking up a claim himself, and he felt satisfied that if I wanted one he could arrange it so that I could get it, and I signified my desire to take one.

Q. And do you know with whom he made the arrangements?

A. I think it was with William Benton and Ed. Knight.

Q. Did you meet Mr. Clarence W. Robnett in this transaction?

A. I met him during the transaction, yes, sir.

Q. Did you meet him before you made your filing?

(Testimony of John E. Nelson.)

A. Yes, I think I did.

Q. And did you make any arrangements with him about the claim? A. Absolutely none.

Q. What part did he take in the transaction?

A. Well, I don't know that it was anything more than a sort of a promoter, to help things along, as far as I could see.

Q. Was there any arrangements made with him about the money that was to be used in paying for this claim?

A. Why, Mr. Miller attended to that, as far as I was concerned, because I was out on the road and had a very limited space of time in which to make any arrangements myself.

Q. Well, did you get your money from Mr. Miller for your expenses, etc.? [916—586]

A. No; I paid my own expenses. I paid all my expenses—paid the filing fees and all.

Q. Did you use your own money to make your final proof? A. No, I didn't.

Q. Now, from whom did you get that?

A. As near as I remember, it was handed to me by Mr. Miller, and who he got it from I don't know.

Q. It wasn't given to you by Robnett?

A. I can't remember as to that.

Q. Do you remember where you received that money?

A. Yes; I believe it was in the Lewiston National Bank.

Q. Now, who gave it to you there—Mr. Miller?

A. Well, I am satisfied that Mr. Miller had his

(Testimony of John E. Nelson.)

hands on the money. Who it came from I don't know.

Q. Did you and Mr. Miller go there and get it from Mr. Robnett? A. I think we did, yes, sir.

Q. And did you give him a note for it?

A. Not at that time.

Q. You didn't give any note to secure it at that time? A. Not at that time.

Q. Did you have any arrangements with Mr. Knight and Mr. Benton that you have referred to with reference to locating you? A. No, sir.

Q. Who made those arrangements for you?

A. Mr. Miller.

Q. And did you ever go to this land?

A. I presume I did. I went out in the timber and wandered around.

Q. How long was that before you made your final proof?

A. It seems to me it was fully two or three months or four months.

Q. Was it before you made your original filing—before you filed your sworn statement? [917—587]

A. Well, before I made any filings at all I went into the timber.

Q. Are you sure of that? A. Yes, sir.

Q. With whom did you go?

A. I went with Ed. Knight and Harry Miller.

Q. Did you go to this claim upon which you filed?

A. I supposed I was going to it.

Q. Now, with whom did you leave Lewiston to go to view this claim? A. I left here alone.

(Testimony of John E. Nelson.)

Q. And where did you go?

A. I went to Ahsahka.

Q. Where else?

A. And then I went to Lou. Stalneker's.

Q. Where else did you go?

A. Well, we went through Dent, and back on Swamp Creek, I think they call it, or Squaw Creek, or some creek of that nature.

Q. How far beyond Dent did you go?

A. It seems to me it was about six or seven miles.

Q. Now, wasn't that just a few days before you made your final proof?

A. Why, I really don't know what month it was in, or anything about it. It is a long time back, and I couldn't say positively. I couldn't swear to anything that occurred then.

Q. Do you remember having a conversation with Knight, in which he told you that you didn't have to see the land before you filed?

A. Indistinctly I think I remember something about that.

Q. Well, now, what is your best recollection?

A. I couldn't swear to anything.

Q. What is your best recollection?

A. Well, I was told that by somebody, but just who it was I couldn't say positively. [918—588]

Q. Now, don't you remember that you had some discussion with Mr. Knight about filing on this land without having seen it; that you would have to swear to that?

(Testimony of John E. Nelson.)

A. I have a faint recollection of that occurring, yes.

Q. And that you would have to swear that you had been on the land, and that he told you that was all right; that people were doing it every day?

A. Yes, I remember something to that effect.

Q. And that was before you filed?

A. It was. Well, I don't remember—I couldn't swear to anything in that case.

Q. I read from the sworn statement that you filed in the land office, which you have identified, and ask you whether or not you and Mr. Knight went over this question, or this part of the affidavit, and discussed the propriety of you signing it: "That I have personally examined said land, and from my personal knowledge state that said land is unfit for cultivation," etc. I will ask you if you remember whether or not you balked at that, when you had to swear to that in the land office?

A. Yes, I made a little balk on it, I remember that.

Q. And that Mr. Knight eased your conscience a little bit by telling you that everybody was doing it, and it was not necessary—

A. Somebody said, "Oh, that's all right." (Whispering.)

Q. And who was at the land office with you at that time?

A. H. R. Miller, Joel Benton and Ed. Knight, and that was all.

Q. Then wasn't it a month or two after that that you went up to look at the land—went up in that di-

(Testimony of John E. Nelson.)

rection? A. Yes, I think it was.

Q. How far above Dent did you travel toward this land? A. Up the river?

Q. Yes.

A. Oh, we didn't go very far up the river. We went up the [919—589] river about half a mile, and then turned and went back into the timber.

Q. How far did you go back into the timber?

A. Well, it seemed to me it was all of six or seven miles.

Q. Didn't you go only a mile and a half from Dent altogether? A. A mile and a half from Dent?

Q. Yes.

A. Well, it was a long mile and a half, if I remember.

Q. Well, I want to find out how far you did go, and how far you really went, Mr. Nelson, that's all.

A. Well, I really couldn't say positively. Distance is deceptive in the timber.

Q. What is your best recollection at this time as to how far you went beyond Dent?

A. Well, from the way my legs felt, I walked fully six or seven miles anyway, wandering around.

Q. Who prepared your sworn statement and other filing papers that you filed in the land office?

A. There was an attorney that had an office right next to the receiver of the land office.

Q. Mr. Cox?

A. Cox—yes, that was the name, I think.

Q. You don't remember fully, do you?

A. Oh, it is vague.

(Testimony of John E. Nelson.)

Q. Now, did you pay him for that service?

A. I did, sir.

Q. How much did you pay him?

A. I am not sure whether it was \$2.00 or \$1.50.

Q. Did you pay any expenses?

A. I did, sir; I paid all my expenses.

Q. Of going to the land and back?

A. Yes, sir—paid all my expenses. [920—590]

Q. And the fee in the land office?

A. \$14.00, I think.

Q. Did you pay it your own self?

A. Absolutely my own money.

Q. Was it money advanced to you for that purpose?
A. No, sir.

Q. And did you say that both Mr. Benton and Mr. Knight went to the land with you?
A. No, sir.

Q. Which one went?
A. Mr. Benton.

Q. And did you pay him for his services?

A. Yes; I think he got \$200.00 out of it.

Q. Well, I know; but did you pay him anything?

A. I didn't pay him myself, no.

Q. And you didn't give it to anybody to pay him, did you?
A. No, sir.

Q. Mr. Robnett paid that, didn't he?

A. I don't think he did. If he did it was unknown to me.

Q. Now, who notified you of the time that you were to make your final proof?

A. Why, I couldn't say. Do you mean who came and informed me to get ready?

Q. Yes.

(Testimony of John E. Nelson.)

A. Why, a young man by the name of Varney. I think, as near as I can remember it.

Q. Well, what did you have to do to get ready?

A. Well, I had to let the folks know—the Mercantile Company know—that I wanted a few days off to go out in the timber.

Q. That was just before your final proof?

A. Yes, sir.

Q. And then you did go up in the timber, and returned? [921—591] A. Yes, sir.

Q. And how long were you back in Lewiston before you made your proof and paid the purchase price of the land?

A. Not over two days—two and a half or three days.

Q. And that was the first time you had ever been to the land office?

A. Yes, I am sure it was. I was only up there once.

Q. And when Mr. Miller first spoke with you about taking up the claim, was there anything said then about where you were to get the money to make your proof?

A. No; he said he could arrange for that all right.

Q. And did you go to see him again when the time came to make proof; or did he come to you?

A. Why, he was stopping at my house at the time—living with me.

Q. And you and he went to the Lewiston National Bank and got the money? A. Yes, sir.

Q. How much did you get?

(Testimony of John E. Nelson.)

A. I got \$400.00, as near as I remember, in gold.

Q. And you didn't give any note at that time?

A. No, sir.

Q. And when was that that you received that money? Was that the day you made your proof?

A. Yes, sir.

Q. And did you go directly from there with that money to the land office? A. Yes, sir.

Q. To make the proof with it? A. Yes, sir.

Q. Now, was the matter discussed at the time that you received that money, as to where you should say you got it, when you went to the [922—592] land office? A. No—only that it was mine.

Q. And who told you to say that?

A. I don't remember.

Q. Well, who was at the bank with you besides Mr. Miller?

A. Ed. Knight I think was there, and Will Benton was there, too.

Q. The four of you went there together?

A. Well, we walked from Miller's cigar-store to the bank together. There was three of us.

Q. Well, who was in the bank with you?

A. Who was in the bank with me?

Q. Yes.

A. Well, I know Mr. Miller was there, and myself, and I think Mr. Knight was there at the time.

Q. And Mr. Robnett?

A. Mr. Robnett was behind the counter.

Q. He was the man you went to see?

A. Well, I didn't go to see anybody, particularly.

(Testimony of John E. Nelson.)

Q. You went there to get the money?

A. I went there to get the money.

Q. And you saw Mr. Robnett, and you got the money from him; is that correct?

A. Well, I don't know who Miller got the money from. It was handed out to him, and he handed it to me.

Q. Well, you were standing right there, weren't you? A. I was standing right there.

Q. And didn't you talk to Mr. Robnett?

A. I said a word or two to Mr. Robnett, yes.

Q. And wasn't it Robnett who handed the money out to Miller?

A. Well, I don't remember who handed it out to him. I wouldn't say that Mr. Robnett handed it out to him. There was another man in the cage with him at the time. [923—593]

Q. Well, it was one of them?

A. It was one or the other.

Q. It was one of the four that you have named that suggested that you should say at the land office that it was your own money?

A. It wasn't a direct suggestion that I can remember; but there was enough so that it percolated through my head that I was to say it was mine.

Q. And didn't they have a set of papers there, pointing out the questions that would have to be answered?

A. No. The first I saw of them was up in Mr. Cox's office.

Q. Did you go over them there?

(Testimony of John E. Nelson.)

A. Just in a casual way.

Q. I mean now the final proof papers—the ones where you are interrogated when you made final proof?

A. No. That was filled out in the office of Mr. Cox.

Q. And you took them to the land office?

A. Yes, sir.

Q. I am not speaking about your first papers; I am speaking about the last papers you filed, when you paid the \$400.00. Now, were they filled out in the land office, or at somebody else's office?

A. They were filled out in the land office, I believe.

Q. And you saw a copy of them before you went there, though, didn't you?

A. By George, I am a blank as far as that goes. I don't really remember it. It don't leave that impression on me at all.

Q. You remember these questions being asked you when you were making your final proof, Mr. Nelson, by Mr. West or any other officer in there, when you answered these questions: "What do you expect to do with this land and the lumber on it when you get title to it?" "Answer. Hold it." Do you remember it? A. All of which I do.

Q. "Question. Has any person offered to purchase this land [924—594] after you acquire title? If so who, and for what amount?" "Answer. No." Do you remember that question and answer?

A. Yes, sir—and that was true, too.

Q. "Question. Where is the nearest and best market for the timber on the land at the present

(Testimony of John E. Nelson.)

time?" "Answer. Lewiston, Idaho." Do you remember that question and answer?

A. I don't remember that answer.

Q. "Question. Did you pay out of your own individual funds all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?" "Answer. Yes, sir." Do you remember that answer being made?

A. Yes, sir, I remember that.

Q. The next question: "Where did you get the money with which to pay for this land, and how long have you had it in your actual possession?" "Answer. Earned it in my trade. About a year and a half." Do you remember that question and answer?

A. Yes, I remember that.

Q. It wasn't true, was it?

A. Well, I figured that my worldly goods were a great deal more than that, and if I didn't have it in spot cash I was certainly good for that much.

Q. Was that argued out to you before you went there?

A. No; there was nothing said about that.

Q. It was just a spontaneous conclusion you came to when you saw that question? A. Yes.

Q. And the very money you had paid in the land office you had obtained at the bank a few minutes before? A. The actual cash, yes.

Q. Now, how long after you made your final proof did you give security for the money you had gotten?

A. Well, as I remember it was the same day. I went right over [925—595] to Mr. Nickerson's

(Testimony of John E. Nelson.)

office, I believe, and signed up the papers.

Q. A mortgage? A. A mortgage and note.

Q. And do you know to whom the mortgage ran?

A. Why, it was Mrs. Thatcher—Curtis Thatcher's mother.

Q. And did you afterwards sell this land?

A. I sold it here about a year and a half ago.

Q. To whom? A. To Curtis Thatcher.

Q. For how much?

A. I got \$60.00 in cash out of it.

Q. That is all you got out of it? A. Yes, sir.

Q. Who conducted that transaction for you?

A. Mr. Butler—Attorney Butler.

Q. When you took up this timber claim did you have any understanding as to how much you were to make out of it?

A. Well, no. I anticipated I would get a couple of thousand out of it. I knew people that had gotten \$1500.00 or \$2,000.00 out of their claims, and I anticipated a similar amount.

Q. Will you name some of those people that you knew that had sold their claims at that time?

A. Well, there was Austin Justice.

Q. To whom did he sell?

A. I haven't the slightest idea—some land company.

Q. Who else?

A. And there was a brother in law of his, I disremember his name, though, and as near as I remember a man by the name of Forbes, living up in that vicinity.

(Testimony of John E. Nelson.)

Q. You didn't know to whom they had sold, though? A. I did not.

Q. Didn't you have any arrangement with Mr. Robnett with reference [926—596] to selling this claim? A. I gave Mr. Robnett an option on it.

Q. And when was that?

A. Well, that was a year or so after I had filed on it—made final proof.

Q. And when was the option? What were you to get for it?

A. Well, he was to sell it at the best figure he could possibly get, and he was to get his commission out of it.

Q. Wasn't the arrangement with Mr. Robnett that you were to get \$500.00 over and above what it cost you?

A. There was no set amount—there was no given amount. I would have willingly sold.

Q. And wasn't that arrangement made before you ever filed on the land?

A. No, sir, absolutely not. There was no arrangement at all.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of John E. Nelson, dated February 24th, 1903, the nonmineral affidavit of John E. Nelson, the testimony of John E. Nelson given on final proof, the cross-examination of John E. Nelson given on final proof, all of which papers the witness Nelson has identified, the testimony of the witnesses at final proof, and the cross-examination of them, the notice of publication, the receiver's

(Testimony of John E. Nelson.)

receipt and the register's certificate, dated May 22d, 1903, a certified copy of the patent issued to John E. Nelson, dated August 3d, 1904, all relating to the entry of the northeast quarter of section 24, township 39 north, of range 2 east, Boise meridian.

Mr. TANNAHILL.—The defendants severally object to each and all of the documents offered in evidence, in so far as they relate to bills No. 388 and 407, upon the ground that they are irrelevant and immaterial, the entry not being involved in either of these actions. And the defendants severally object to the final proof papers being admitted in evidence in support of either of the actions, and especially the testimony [927—597] of the claimant, John E. Nelson, the cross-examination of the claimant, John E. Nelson, the testimony of the witness Edward L. Knight, the cross-examination of the witness Edward L. Knight, the testimony of the witness William B. Benton, the cross-examination of the witness William B. Benton, the affidavit of Edward L. Knight, and the proof of publication; upon the ground that the papers relate to the final proof, and matters occurring after the filing of the sworn statement are irrelevant and immaterial. The defendants severally waive any further identification of the papers offered.

Said documents were thereupon marked by the Reporter as Exhibits 24, 24A, 24B, 24C, 24D, 24E, 24F, 24G, 24H, 24I, 24J, 24K, 24L, 24M, and 24N.

Mr. GORDON.—Q. Did I understand you to say that some time after you made your proof you went

(Testimony of John E. Nelson.)

to Mr. Cox's office and signed a note for the money that you had received?

A. No, sir; I didn't go to Mr. Cox's office.

Q. Well, whose office?

A. Nickerson—John Nickerson.

Q. And you gave a note—to whom was it? Curtis Thatcher?

A. Curtis Thatcher. No—it was Mrs. Thatcher—his mother. It wasn't Curtis Thatcher; it was Mrs. Thatcher.

Q. And that is the only note you gave in the transaction?

A. That is the only one I remember of giving.

Q. And subsequently you made a deed to Mrs. Thatcher? A. Yes, sir.

Q. Did you ever know Mr. Curtis Thatcher in this transaction at all? Did you ever get any money from him? A. At the time of the filing, or since?

Q. Any time—except the money you got when you sold your land? A. No, sir.

Q. And did you get the \$70.00 that you referred to from— [928—598] A. \$60.00.

Q. —\$60.00, from Curtis Thatcher?

A. Yes, sir, I got a check from him.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Nelson, did you have any contract or agreement that you would sell your land to anyone, prior to the time you filed your sworn statement?

A. No, sir.

Q. Or prior to the time you made your final proof?

(Testimony of John E. Nelson.)

A. No, sir.

Q. How long after you filed your sworn statement and made your final proof was it that you did sell your land? A. How long afterwards?

Q. Yes?

A. Well, it must have been pretty close to six years.

Q. You paid taxes on it during all that time, did you? A. No, I didn't pay taxes on it.

Q. Did you give anyone else an option on it besides Mr. Robnett?

A. Yes; I gave an option to a partner of Joe Payne's—Washburn.

Q. Washburn? A. Mr. Washburn.

Q. Did you give an option to anyone else?

A. Not that I remember of.

Q. Did you ever have any talk with either Kester, Kettenbach or Dwyer about it? A. Never.

Q. You had no contract or agreement with them in any way in relation to the claim?

A. I never knew them in the transaction at all.

Q. Was there any contract or agreement that you would sell your land to either Curtis Thatcher or Eliza W. Thatcher, prior to the time [929—599] you filed your sworn statement? A. No, sir.

Q. Or prior to the time you made your final proof?

A. There was nothing said about it at all.

Q. There was no understanding to that effect?

A. No.

Q. Then the affidavit you made at the time you filed your sworn statement, that "I have made no

(Testimony of John E. Nelson.)

other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true at the time you made it, was it?

A. I have made no contract with anybody. In fact, I haven't mentioned the subject of selling, because I expected to hold it a reasonable length of time in order to realize something, and get a good figure for the same.

Q. Then the affidavit was true? A. Yes, sir.

Q. True at the time you made it? A. Yes, sir.

Q. And true at the time you made final proof?

A. Yes, sir.

Q. And it is still true?

A. Yes, sir. There has been no agreement made at all to sell.

Redirect Examination.

(By Mr. GORDON.)

Q. You never paid any interest on that note, either? It was all fixed up at final settlement, was it? [930—600]

A. It was fixed up at final settlement. I had been notified several times that the interest was due.

Q. By whom were you notified?

(Testimony of John E. Nelson.)

A. By Curtis Thatcher.

At this time a recess was taken until two o'clock P. M. [931—601]

At two o'clock, P. M., the hearing was resumed.

[Testimony of Charles W. Taylor, for Complainant.]

CHARLES W. TAYLOR, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Charles W. Taylor?

A. Charles W. Taylor.

Q. Where do you reside, Mr. Taylor?

A. Now, I am fifteen miles from Asotin, up on the flat.

Q. Where did you reside in April, 1904?

A. I was in the Cloverland country then.

Q. Is that in Washington? A. Yes, sir.

Q. Are you a brother of Edgar J. Taylor?

A. Yes, sir.

Q. Were you married in 1904? A. No, sir.

Q. Are you married now? A. No, sir, not yet.

Q. Did you know Jackson O'Keefe?

A. Yes, sir.

Q. Was that his name, or did he have a middle initial?

A. I don't know whether he had a middle initial or not; J. O'Keefe is all I know.

Q. Was he a relative of yours? A. Uncle.

Q. What business was he engaged in in the fall of 1903 and the spring of 1904?

(Testimony of Charles W. Taylor.)

A. He was in the irrigation business. [932—602]

Q. Was he connected with some company?

A. Him and Mr. Kester was together.

Q. What Mr. Kester? A. George.

Q. George H. Kester? A. Yes, sir.

Q. Now, I say, were they connected in some company, or were they just a partnership?

A. Just a partnership, I guess, was the way I understood it.

Q. You took up a timber claim in April, 1904, did you not?

A. Yes, sir, I guess it was somewheres along there.

Q. I show you timber and stone land sworn statement, dated April 25, 1904, signed Charles W. Taylor, and ask you if you signed that paper and filed the same in the land office about the date it bears? A. Yes, sir.

Q. I show you the nonmineral affidavit of the same date, signed Charles W. Taylor. Is that your signature to that paper? A. Yes, sir.

Q. I show you the testimony of Charles W. Taylor, given on final proof, July 11, 1904, and ask you if that is your signature to that paper? A. Yes, sir.

Q. I show you the cross-examination of Charles W. Taylor, taken at the same time. Is that your signature to that paper? A. Yes, sir.

Q. And all those papers were filed in the land office at Lewiston, were they not? A. Yes, sir.

Q. Mr. Taylor, who first spoke to you about taking up a timber claim?

Mr. TANNAHILL.—The defendants severally

(Testimony of Charles W. Taylor.)

object to any evidence of the witness relative to his taking up a timber claim, in so far as it [933—603] relates to bills No. 406 and 407, on the ground that it is irrelevant and immaterial, his entry not being involved in those particular actions.

Thereupon, upon request, the last question was repeated by the stenographer.

A. Mr. O'Keefe.

Q. Mr. Jackson O'Keefe?

A. Jackson O'Keefe, yes, sir.

Q. How long was that before you did take up a timber claim?

A. Well, I don't remember exactly. It wasn't such a great long time though; I don't remember just how long it was.

Q. Wasn't it the fall before you took it up in the following spring? A. It was in the fall, I think.

Q. What did he say about taking up timber claims?

Mr. TANNAHILL.—We object to that, on the ground that it calls for a statement of a party who is now deceased, not a party to the action, and a conversation not in the presence of either of the defendants, and they can in no way be bound by the same.

Thereupon, upon request, the last question was repeated by the stenographer.

A. He just simply asked me if I didn't want to take up a timber claim. He said he was going to take up one, and wanted me to go with him, something to that effect.

(Testimony of Charles W. Taylor.)

Q. Did he say anybody else was interested with him in taking up timber claims?

A. No, sir, not at that time he didn't.

Q. Well, what else was said about taking up a timber claim? A. At that time?

Q. Yes.

A. He wanted me to tell—to see my brother.

Q. That was Edgar J. Taylor? [934—604]

A. Edgar J. Taylor.

Q. Who else?

A. Joseph H. Prentice, and Edward Dammarel.

Q. Where were you employed at that time?

A. I was working for O'Keefe and Kester at that time.

Q. George H. Kester? A. Yes, sir.

Q. Who were the Mr. Prentice you have mentioned, and Mr. Dammarel employed by?

A. Well, I don't think they was—I don't know—I believe—I am not positive, but I believe Mr. Dammarel was working in a store at Cloverland, but I am not positive of it; I don't know whether he was working for anybody at that time.

Q. Where was your brother working?

A. I don't remember whether he was working down town or up on the flat somewhere.

Q. Was he employed by Mr. Kester and Mr. O'Keefe?

A. I don't think he was at that time; he might have been, but I don't believe he was.

Q. What else was said in that conversation about taking up a timber claim?

(Testimony of Charles W. Taylor.)

A. Well, I don't know as there was anything else said more than he just wanted me to go up and see these parties.

Q. Who was to furnish the expenses and the money to purchase the claim?

A. He was to let me have the money.

Q. What were you to do with your claim after you had made proof on it?

A. At the time he spoke to me about that, the first conversation he had with me about he would furnish me the money, he told me that he would buy the claim of me. [935—605]

Q. How much was he to give you, over and above the expenses? A. He was to give me \$150.00.

Q. That was the first conversation you had with him about timber claims? A. Yes, sir.

Q. What were you to tell Mr. Dammarell and Mr. Prentice and your brother when you were to see them about taking up a timber claim?

A. I was to tell them the same thing he told me.

Q. Did you see them? A. Yes, sir.

Q. Did you tell them the same thing?

A. I think I did, as near as I could remember it.

Q. Now, did Mr. O'Keefe later than that tell you that somebody was going to take up claims with him, or something to that effect?

A. He did later, yes, when we started for the timber.

Q. What did he say?

A. He said that George Kester and some more of them was taking up claims.

(Testimony of Charles W. Taylor.)

Q. Was that the way he said it?

A. Somewheres like that, as near as I can remember now.

Q. Did he tell you that Kester was taking up claims for himself, or that he was taking other people in there to take claims up for him?

Mr. TANNAHILL.—We object to that as leading and suggestive, and calling for the conclusion of the witness.

A. He said that George Kester was going in there with a crowd to take up claims; I don't remember whether he said he was taking them up for himself, or just how he did say it.

Q. Now, how long after that conversation did you start for the timber? Oh—did you agree to take that timber claim up in compliance with those arrangements? A. Yes, sir.

Q. With Mr. O'Keefe? [936—606]

A. Yes, sir.

Q. And how long before was that, before you started into the timber?

A. Well, I don't remember exactly; it was somewheres in the neighborhood of two or three weeks though.

Q. And then you did go to inspect this timber, did you? A. Yes, sir.

Q. And who went with you? A. From home?

Q. Yes, from home.

A. There was Mr. O'Keefe, and myself, and my brother Edgar J. Taylor, and Joseph Prentice, and Ed. Dammarell.

(Testimony of Charles W. Taylor.)

Q. Did you meet Mr. O'Keefe at the depot?

A. Yes, sir, I met him there at the depot at Lewiston.

Q. Where did you start from?

A. We left,—we came from Asotin.

Q. To Lewiston? A. To Lewiston, yes, sir.

Q. Did all of you come together?

A. No. Mr. O'Keefe, Mr. Dammarell, and Mr. Prentice came down in the morning, and my brother and I didn't come down until after noon.

Q. Did you join them here then? A. Yes, sir.

Q. Did you start for the timber that afternoon?

A. Yes, sir, that day.

Q. Where did you go? A. To Orofino.

Q. Did you go by train to Orofino?

A. Yes, sir.

Q. Who paid the expenses of that trip?

A. Mr. O'Keefe.

Q. Did he buy you a round trip ticket? [937—
607] A. No, sir.

Q. When you got to Orofino did you go the rest of the way by train?

A. No, sir, we went horseback, some of them went horseback, two of the boys went horseback, and the rest of us went in a hack.

Q. How far did you go?

A. Went to Pierce City that way.

Q. How far is that from Orofino?

A. About thirty miles, or thirty-five, something like that, I should judge.

Q. Did you go still further on then?

(Testimony of Charles W. Taylor.)

A. Yes, sir.

Q. Well, how much further did you go?

A. Well, I don't know how far they called it from there,—seven or eight or ten miles.

Q. How did you traverse that route?

A. Horseback.

Q. Who arranged for the carriages and the horses for the party on that trip?

A. Mr. O'Keefe and I went and spoke for the rigs ourselves.

Q. Did you pay any of the expense of the rigs?

A. No, sir.

Q. Not even for your own? A. No, sir.

Q. I mean not even your own share?

A. No, sir.

Q. How long were you in going from Lewiston and returning to Lewiston, how long were you away?

A. We was gone two or three days; I don't remember now just how long we was gone.

Q. And you paid none of that expense whatever of your trip? A. No, sir. [938—608]

Q. Then did you return to your home at Asotin?

A. Yes, sir.

Q. And you did not file for several months later?

A. It was some time; I don't remember just how long it was,—some time afterwards.

Q. Well, you went to look at the land some time the latter part of October, did you not, some time in October?

A. Just before the fair started here that fall; I don't remember whether it was in October, I think

(Testimony of Charles W. Taylor.)

it was though.

Q. And you filed on this claim in the following March? A. Yes, sir.

Q. You remember that? A. Yes, sir.

Q. Now, who notified you of the time to file on the claim? A. Mr. O'Keefe, I think.

Q. Before we get to that though, I will ask you who located you on the claim? Who went over the claim with you? A. Mr. William Dwyer.

Q. The gentleman present? A. Yes, sir.

Q. Did you have any arrangement with him about paying a locating fee?

A. Not at that time; no, sir.

Q. Did you ever have any arrangement with him?

A. I never talked with him at all until after I came to Lewiston.

Q. And you came to Lewiston to make your filing?

A. Yes, sir.

Q. Do you remember who advised you? Did you say Mr. O'Keefe advised you of the time to come to Lewiston to make your filing?

A. I think he was the party.

Q. And how long were you in Lewiston before you filed?

A. I was here three or four days, I think, if I remember right, [939—609] before I got in, pretty near a week, something like that.

Q. Did you stand in a line at the land office?

A. Yes, sir.

Q. How long were you in that line?

A. Between three and four days and a week.

(Testimony of Charles W. Taylor.)

Q. Do you remember what number of place you held in the line?

A. No, I don't remember now.

Q. As near as you can remember.

A. Ten or twelve.

Q. Who was in front of you, do you remember?

A. I don't remember.

Q. Who stood immediately behind you?

A. I think it was my brother, but I am not positive.

Q. Who prepared your sworn statement and other papers you filed in the land office.

A. Mr. O'Keefe; I suppose he did, he handed them to me.

Q. He brought them to you? A. Yes, sir.

Q. Where were you when he brought them to you in the line?

A. Up in the hall there somewhere; I don't remember whether I was right in line or not.

Q. To you while you were in line? A. Yes, sir.

Q. Waiting to get in the land office?

A. Yes, sir.

Q. You paid a filing fee at the land office when you filed, did you? A. Yes, sir.

Q. Where did you get the money for that fee?

A. I got that from Mr. O'Keefe.

Q. He gave it to you? A. Yes, sir. [940—610]

Q. You didn't have to ask him for it, did you?

A. No, sir.

Q. He brought it to you and gave it to you for that purpose? A. Yes, sir.

(Testimony of Charles W. Taylor.)

Q. And after you filed, in the course of a couple of months it came time to make final proof, is that correct? A. Something like that, yes, sir.

Q. Who notified you of the time to make final proof?

A. Well, there was a paper published, either when the time to make final proof or the time to file, I ain't sure which, but I believe the paper stated when we was to make final proof, if I am not mistaken.

Q. Then you came down to the land office, did you, again? A. Yes, sir.

Q. Did anyone come with you at that time?

A. Yes, sir, the same crowd that had been with me all the time.

Q. That was Mr. Prentice, and Mr. Dammarell, and your brother? A. Yes, sir.

Q. Did you see Mr. O'Keefe on that occasion?

A. Yes, sir.

Q. Do you remember how much money you paid in the land office when you made your proof?

A. I don't remember now just the exact amount, no.

Q. Wasn't it about \$400.00?

A. Somewheres, four hundred and something.

Q. Where did you get that money?

A. From Mr. O'Keefe.

Q. Did you have to ask him for it, or did he bring it to you? A. I hadn't asked him for it at all.

Q. And you paid that money into the land office?

A. Yes, sir.

Q. Now, was there any discussion at that time

(Testimony of Charles W. Taylor.)

between you and Mr. [941—611] O'Keefe or anyone else as to where you should say you received that money, what you should say about it?

A. No, sir.

Q. Did you go over the final proof papers with anyone, the questions contained in there, as to what you should swear to on that occasion?

A. I don't remember that I did.

Q. Now, did I ask you what you were to do with this land, in your first conversation with Mr. O'Keefe, what you were to do with this land to make that \$150.00?

A. What I was to do with it?

Q. Yes. A. I was to sell it to him.

Q. Were you to sell it to him or to someone else?

A. Well, he was the one I was dealing with; he never told me about selling to,—never mentioned nobody else's name about me selling it to.

Q. Did he give you to understand that he was acting for someone else?

A. No, sir, not then at all.

Q. Did he later?

A. Later on he told me he couldn't do what he had agreed to.

Q. Now we will get to that after while. Did he tell you he was carrying on that transaction for Mr. Kester?

A. No, sir, he didn't say it in that way; that him and Mr. Kester was taking up this land.

Q. Was that the way he said it?

A. Something like that.

Q. And that you were to convey it to him to get the \$150.00?

A. Something like that.

(Testimony of Charles W. Taylor.)

Q. Do you remember that when you came down to the land office and [942—612] made proof that you swore to certain statements?

A. Yes, sir, I think I did.

Q. Now do you remember this question being asked you: "Did you pay out of your own individual funds all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?" "Answer. Yes. Yes."

A. Yes, sir.

Q. Was that true or was it false?

A. Well, I had borrowed the money and given my note for it.

Q. I know, but I asked you was that true or was it false?

A. About me paying for it with my own money?

Q. Yes.

A. Well, I don't know hardly how you would call it; I gave my note for the money.

Q. How you borrowed the money, or had he just furnished you the money to take the claim up for him?

A. Well, he let me have the money and took my note for it.

Q. I know, but answer my question.

A. And I was to sell it to him after I got the patent for it.

Q. But that arrangement was made before you ever went to see the land, is that correct?

A. Yes, sir, but he changed that though, contradicted himself, and said he couldn't do that.

(Testimony of Charles W. Taylor.)

Q. When did he make that statement?

A. That he couldn't—?

Q. That he couldn't do it.

A. When we was on the road to the timber.

Q. Did he tell you who had advised him that it couldn't be done that way? A. Yes, sir.

Q. Who? A. George Kester. [943—613]

Q. But you proceeded on the same old understanding or arrangement did you not?

A. Well, sir, after I got my receiver's receipt I turned it over to him.

Q. I mean you kept right on taking up the timber just the same as though he hadn't said that, didn't you?

A. Yes, sir, went right on and took up the timber.

Q. And you intended to convey to him just the same? A. Yes, sir.

Q. Now, what did he tell you when he made that statement? What is the exact language, as near as you can remember it?

A. That last question I just answered about—?

Q. The statement he made to you on the way to the timber.

A. He said that he couldn't,—he said,—he told us that he would give us \$150.00 for them after we had proved up.

Q. Give you \$150.00 for what, did he say?

A. For the claims, and he said he couldn't do that.

Q. Did he say it just that way?

A. Well, as near as I remember it, that George told him he couldn't make no agreement of that kind,

(Testimony of Charles W. Taylor.)

or something to that effect.

Q. Do you remember this question being asked you at the land office when you made your proof, question 17: "Where did you get the money with which to pay for this land and how long have you had the same in your actual possession?" "Answer. I earned a part of it and borrowed the balance. About two weeks." A. Yes, sir.

Q. Was that true or not?

A. That is the question I answered.

Q. That wasn't correct though, was it?

A. No, sir, I had got the money that day.

Q. And you had gotten it from Mr. O'Keefe?
[944—614] A. Yes, sir.

Q. Did you see where Mr. O'Keefe got the money from? A. No, sir, I didn't see where he got it.

Q. Were you with him when he received it?

A. No, sir.

Q. And you took the very money he gave you and paid it into the land office and made your proof with it, did you? A. Yes, sir.

Q. Who told you to make that statement, if anyone? A. He told me that himself.

Q. They gave you a receipt for the money you paid in the land office, did they not?

A. I got a receipt from the land office that day; yes.

Q. What did you do with that receipt?

A. I laid it home some place.

Q. I know, but you haven't had it home all the time, have you? A. No, sir.

(Testimony of Charles W. Taylor.)

Q. Tell us what you did with it the day you received it.

A. The day I received it I took it home with me. A couple of days afterwards, either the next day or the second day, I turned it over to Mr. O'Keefe.

Q. Did he bring it to you again? A. Yes, sir.

Q. When was that?

A. Well, I don't remember just when it was; it was the first time that there was any inspectors around,—I think it was O'Fallon—

Q. And Goodwin? A. Goodwin.

Q. Did Mr. O'Keefe come to see you?

A. He came by my place where I was living in town and told me them parties was around and he would hand it back to me.

Q. What did he say when he gave it back to you?
[945—615]

A. He told me to keep it until that thing was settled.

Q. And what further did he say?

A. He said, I have an idea, that it would look as though I still owned the claim yet, or something to that effect.

Q. And you had already conveyed the claim, hadn't you? A. Yes, sir.

Q. And did he tell you what to tell the inspectors if they came to see you?

A. He told me to tell them I had my receipt and the claim was mine.

Q. When you made him a deed, when you made a deed to this claim, was anything said about recording

(Testimony of Charles W. Taylor.)

the deed? A. Yes, sir.

Q. What was said?

A. He said he wouldn't record it until the patent come from the land office, something like that.

Q. Who said that? A. Mr. O'Keefe.

Q. Now, did you get your \$150.00? A. Yes, sir.

Q. When did you get that? The day you made proof? A. A couple of days afterwards.

Q. Who gave it to you? A. Mr. O'Keefe.

Q. Did you make the deed the same day?

A. The day I got the \$150.00? Yes, sir.

Q. Do you know to whom the deed ran, who the grantee in the deed was?

A. Mr. O'Keefe, if I remember right.

Q. Did you ever make more than the one deed to that piece of property? A. No, sir.

Q. Now, state what was said when you made the deed with reference [946—616] to the transaction?

A. About all that was said, he said he wouldn't record it until after the patents came from the land office.

Q. Where was the deed made and signed?

A. In Mr. Bailey's office at Asotin, an attorney there.

Q. Was Mr. O'Keefe there? A. Yes, sir.

Q. State what was said. Did he just take you down there and you signed the deed, or was any arrangements made, any talk about price or anything of the kind when you made that deed? A. No, sir.

Q. You just went down there and made the deed

(Testimony of Charles W. Taylor.)

and he gave you \$150.00?

A. He didn't give me the money there; he gave it to me when we went to his office.

Q. I mean about the same time. A. Yes, sir.

Q. There wasn't any dickering about price or anything of that kind?

Mr. TANNAHILL.—We object to it as leading and suggestive.

Mr. GORDON.—Q. Was there? A. No, sir.

Q. Did you ever talk to Mr. George Kester about this timber claim? A. No, sir.

Q. Or Mr. William Kettenbach? A. No, sir.

Q. Now, when was anything said about paying a locating fee?

A. Well, I think, if I ain't mistaken, Mr. O'Keefe told us either on the road to the timber or when we came back from the timber, I am not positive.

Q. What was said?

A. He said we would have to pay \$100.00 location fee.

Q. When did you pay that location fee? [947—617] A. The day we proved up, I think.

Q. To whom did you pay it?

A. Paid it to Mr. William Dwyer.

Q. From whom did you get the money to pay that?

A. Mr. O'Keefe.

Q. Did you get that at the same time you got the money to make proof?

A. No, I think we got that first; I am not positive though.

Q. Was it the same day?

(Testimony of Charles W. Taylor.)

A. I think it was; I am not sure.

Q. Did you ask him for it? A. No, sir.

Q. Now, state the transaction, will you? State what he said and did.

A. He just handed me \$100.00 and told me to pay that to the locator; that was all there was said.

Q. Do you remember what the denomination of the money was that he gave you? A. It was a bill.

Q. What kind of a bill?

A. A hundred dollar bill.

Q. Was it a new bill or an old bill?

A. It was a new bill.

Q. A brand new bill?

A. Yes, sir, I think it was; it looked like it.

Q. Had it ever been folded?

A. I don't remember whether it had or not.

Q. And you gave that to Mr. Dwyer?

A. Yes, sir.

Q. At the time this money was given to you, did you give any note or any other evidence of indebtedness? A. Nothing but just a note. [948—618]

Q. When was that?

A. That was signed up the day we got the money, I think, a joint note, my brother and me together.

Q. Was that before or after proof?

A. I don't remember; it seems to me like it was the day that—

Q. I mean, if it was the same day was it before or after proof on the same day.

A. Before, I think; I am not positive though that it was the same day.

(Testimony of Charles W. Taylor.)

Q. Now, do you remember of testifying at the trial of these defendants Kester, Kettenbach and Dwyer, at Boise, in February of this year? A. Yes, sir.

Q. And do you remember, before going down to that trial, whether or not you had ever read the record of your testimony in the former trials of Kester, Kettenbach and Dwyer?

A. I read a part of it.

Q. Where did you get that testimony?

A. From the prosecuting attorney at home.

Q. What is his name? A. Shaughnessy.

Q. Where did you get it, and state the circumstances of your getting it.

A. He handed it to me one day and told me to read it.

Q. Is he the law partner of Mr. Tannahill?

A. I think he is.

Q. And how far from where you live did Mr. Shaughnessy live?

A. Mr. Shaughnessy lives over here at Clarkston, I think, but at that time I was living four mile and a half from town.

Q. Did he bring it out to your place?

A. Yes, sir. He was going by there, him and the deputy sheriff, somewhere, and I was ready to go off myself, and they went one road and [949—619] I went the other.

Q. Did he make any statement when he handed it to you?

A. Just handed it to me and told me to read it, and I told him I would if I had time.

(Testimony of Charles W. Taylor.)

Q. You did read it, didn't you?

A. I didn't read it all; I read part of it.

Q. Did you finish it when you got down to my office in Boise later?

A. No, sir; I had the opportunity, but—

Q. I will ask you whether or not you proceeded in the matter of taking up this claim and disposing of it just the same as you had your understanding and arrangement with O'Keefe the first time you talked with him? A. Yes, sir.

Q. And the second statement of Mr. O'Keefe's, on the way to the timber, that he couldn't make an agreement, did that affect your understanding as to what was to become of the claim in any way?

A. There was nothing more said about it at all.

Q. I say did that affect your understanding as to the first arrangement you had with him?

A. Well, I considered it all off then for the time being, that is, considered that there was no obligation then at that time; that is the thought I gave it.

Q. You didn't have any money to buy a timber claim, did you? A. No.

Q. And there never was another word said to you about buying that claim, was there? A. No, sir.

Q. And when he gave you the money you just turned the final receipt over to him, is that correct?

A. Yes, sir, a couple of days after I got it.

Q. And when he wanted you to make a deed he brought it down to you and gave you \$150.00 and you signed it, isn't that correct? [950—620]

Mr. TANNAHILL.—We object to that as leading

(Testimony of Charles W. Taylor.)

and suggestive.

A. Yes, sir.

Mr. GORDON.—Q. Have you ever been interviewed about your testimony in this case by any of the defendants?

A. Have they ever talked to me about it?

Q. Yes. A. No, I don't think they have.

Q. Are you sure of it?

A. I have talked to all of them that I was acquainted with.

Q. When did you talk with them?

A. Oh, I talk to them every time I meet them, speak to them and talk to them.

Q. Was anything said about how you should testify in this case? A. No, sir.

Q. Has it ever been argued with you by any of them that your testimony wasn't correct, that you had given at the former trial?

A. You mean have they ever told me I didn't testify correct?

Q. Yes. A. No, sir.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement, signed Charles W. Taylor, dated April 25, 1904, the nonmineral affidavit of Charles W. Taylor, the testimony of Charles W. Taylor given on final proof, the cross-examination of Charles W. Taylor given at the same time, all of which papers have been identified by the witness, the testimony of the witnesses on final proof, the cross-examination of them, the notice for publication, the receiver's receipt, and the register's certificate,

(Testimony of Charles W. Taylor.)

dated July 11, 1904, certified copy of the patent issued to Charles W. Taylor, December 31, 1904, all relating to the entry of lots 1 and 2, and the east half of the northwest quarter of section 30, in township 38 north, of range 6 east, Boise Meridian. [951—621]

Said above mentioned documents were thereupon marked by the stenographer as Exhibits 25, 25A, 25B, 25C, 25D, 25E, 25F, 25G, 25H, and 25I.

Mr. TANNAHILL.—The defendants severally object to any of the papers being introduced in evidence in so far as they relate to bills No. 406 and 407, on the ground and for the reason that the entry is not involved in these two particular actions. The defendants also severally object to the final proof papers being received in evidence in support of either of the bills, and especially the testimony of Charles W. Taylor, the claimant, the cross-examination of Charles W. Taylor, the claimant, the testimony of William Dwyer, and the cross-examination of William Dwyer. The testimony of one witness seems to be missing.

Mr. GORDON.—I didn't have the rest of them, Mr. Tannahill.

Mr. TANNAHILL.—All right. And the proof of publication, upon the ground that they relate to the final proof and matters occurring long after the filing of the sworn statement, and are irrelevant and immaterial. The defendants severally waive any further identification of the papers just offered.

Mr. GORDON.—Q. Now, do you remember, the

(Testimony of Charles W. Taylor.)

first talk you had with Mr. O'Keefe, exactly what he said his connection with Mr. Kester was?

Mr. TANNAHILL.—We object to the question upon the ground that it assumes that the witness has testified that Mr. O'Keefe said there was some connection with Mr. Kester, while the witness has testified to the contrary. There was nothing said about it.

Mr. GORDON.—Answer the question.

Thereupon, upon request, the last question was repeated by the stenographer.

A. The first talk he ever had with me, about all I remember he said when he spoke about Kester's name at all was that him and Kester was going into the timber to take timber; that is as near as I can get [952—622] at it, as much as I remember about it.

Q. I will ask you whether or not you made this statement: That he and George H. Kester were in together, and that they were going to get some parties to take up timber claims for Kester?

A. Well, he may have said that, but it has been so long ago that I have about forgot a whole lot of this. He may have said it, and I ain't positive of it now.

Q. Do you remember making an affidavit, Mr. Taylor, before Mr. O'Fallon and Mr. Goodwin in July, 1905?

A. I believe I did make a statement before them in Boise. I think that was in July; I am not positive.

Q. Was that a voluntary statement that you made to them?

(Testimony of Charles W. Taylor.)

A. It was in what they called their sweat-box.

Q. Did they call it the sweat-box?

A. They didn't call it the sweat-box, no, sir.

Q. Well, did they sweat you?

A. Well, it was pretty warm in there for awhile.

Q. Well, what did they do? Did you tell them any different story than you have told here?

A. I don't remember, but I think I told them about the same thing, as near as I can remember.

Q. You told them the truth, didn't you?

A. I aimed to.

Q. And you have told the truth here, have you not?

A. That is my calculation.

Q. Did they have to use any pressure to get you to make a statement similar to the one you have made here?

A. They told me if I didn't, if I wasn't careful they would send me to the penitentiary.

Q. If you weren't careful about what?

A. About what I said. [953—623]

Q. Did they show any indication that they wanted you to tell anything but the truth?

A. Well, I don't know; the truth seemed to be what they was after.

Q. You didn't want to tell anything about it, did you?

A. I didn't want to tell anything more than I had to. That was the first time I had ever been in court, and they looked pretty big to me.

Q. There hasn't been any pressure brought upon you to testify in this hearing, has there?

(Testimony of Charles W. Taylor.)

A. No, sir.

Q. You haven't been intimidated in any way, have you? A. Not a bit.

Q. And there has been no disposition shown to have you tell anything but the truth, has there?

A. No, sir.

Q. Either at this hearing or at the time you appeared, in February last, as a witness for the Government against the same defendants?

A. No, sir.

Q. Did you give Mr. O'Fallon and Mr. Goodwin practically the same statement that you have given here?

Mr. TANNAHILL.—We object to that, on the ground that the statement is the best evidence, and the witness has a right to examine the statement before he answers such a question as that. It is very hard for anyone to remember five years back what kind of a statement he made, and as counsel has the statement in his hand it is right and proper that he should hand it to the witness and let him read it over.

Thereupon, upon request, the last question was repeated by the stenographer.

A. I think I did, as near as I can remember.

Mr. GORDON.—Q. When they told you you had better be careful it was that you weren't going to give them anything? Is that correct? [954—624]

A. Yes, sir.

Q. I will ask you to look at this affidavit, Mr. Taylor, which purports to be an affidavit made by you before Mr. O'Fallon July 13, 1905, and ask you

(Testimony of Charles W. Taylor.)

if that is your signature to that paper?

A. Yes, sir.

Q. Did you read that paper over before you signed it? A. No, I don't think I did.

Q. Have you ever read it over since?

A. This paper?

Q. Yes. A. No, sir.

Q. Well, read it over (handing witness affidavit), and see if there is anything in that that isn't true.

Thereupon the witness apparently read the affidavit.

Q. That is the affidavit you signed, is it?

A. Yes, sir.

Q. And are they the facts as you understood them at that time?

A. Yes, sir. There are a lot of things in there a man can't remember without he would read it over though.

Q. Now, does that refresh your recollection as to what Mr. O'Keefe told you his connection and relations with Mr. Kester were in regard to timber claims?

Mr. TANNAHILL.—We object to the question, on the ground that it calls for a conversation with a person who is now deceased, and not in the presence of Mr. Kester or any of the defendants.

The SPECIAL EXAMINER.—Answer the question.

A. Yes, sir.

Mr. GORDON.—Q. What did he say about Mr. Kester?

A. He said that him and Kester was in together,

(Testimony of Charles W. Taylor.)

just as that affidavit said there, that they was going into the timber to take up claims. [955—625]

Q. What about other people taking up claims?

A. Well, that is what he said, that they was, him and the parties was going in to take up claims.

Q. For whom? A. For him and Kester.

Q. And who was it your understanding was to get your claim?

A. Mr. O'Keefe was to get mine, and he was to turn it all over to Kester himself.

Q. Did you make the same proposition to your brother and to Mr. Dammarell and Mr. Prentice?

Mr. TANNAHILL.—We object to that as immaterial.

A. Yes, sir.

Mr. GORDON.—Q. Did they agree with you to take up a claim under the same proposition?

A. Yes, sir.

Q. Did you know anything about the financial condition of Mr. Jackson O'Keefe?

A. No, sir, not very much.

Q. Did you know enough about him to know whether or not he was a man that had money to deal in timber claims?

A. No. I know he always had money to do what he wanted to with, but how much money he had I didn't know.

Q. Now, do you remember whether Mr. O'Keefe said anything about the \$150.00 he was to give Prentice?

A. He told me to tell him what he would give him.

(Testimony of Charles W. Taylor.)

Q. Was he going to give him that, or was he going to credit him with that on his account?

A. He never said anything to me about that, that I know of. I don't remember anything about how he was to pay him, whether he was to credit him on what he owed him, or whether he was to pay him the money. [956—626]

Q. Do you remember whether or not Mr. O'Keefe told you that he intended to give Prentice credit for the \$150.00 that he was to receive for his claim on what he, Prentice, owed the Cloverland Irrigation Company?

A. I don't remember whether he did or not.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Taylor, do you remember making an affidavit before George H. Rummonds, a notary public, on the 21st day of January, 1907?

A. I think I did. I don't remember what day it was, or when it was.

Q. Look that paper over and the signature, and state whether or not that is the affidavit you made (handing witness paper). You remember making that affidavit, do you? A. Yes, sir.

Q. And you signed it? A. Yes, sir.

Q. The affidavit is true, is it? A. Yes, sir.

Mr. TANNAHILL.—We ask that it be marked as Defendants' Exhibit "E," for identification.

Said above affidavit was thereupon marked by the stenographer as Defendants' Ex. "E" for identification.

(Testimony of Charles W. Taylor.)

Redirect Examination.

(By Mr. GORDON.)

Q. I show you a deed made July 12, 1904, signed and executed and acknowledged by C. W. Taylor, and ask you whether that is your signature and whether you signed that and acknowledged that deed? A. Yes, sir.

Mr. GORDON.—As the deed that the witness has identified is the original, and we do not wish to hold the same as an exhibit, it is [957—627] stipulated by and between the parties that Charles W. Taylor made and executed and acknowledged a deed, bearing date July 12, 1904, conveying to William F. Kettenbach and George H. Kester, in consideration of \$1.00, lots 1 and 2, and the east half of the northwest quarter of section No. 30, in township numbered 38, north of range 6 east, Boise meridian, containing 157.80 acres, and that said deed was acknowledged before George W. Bailey, notary public of Asotin, Washington, July 12, 1904, and that said deed was recorded in the office of the recorder of Nez Perce County, Idaho, at the request of the Lewiston National Bank January 20, 1906, in book 84 of Deeds, at page 327.

Mr. GORDON.—Q. Mr. Taylor, is that the deed that Mr. O'Keefe told you would not be recorded until after you got your patent?

A. Yes, sir, that was the only deed that was ever made out to my knowledge.

Q. It was the only deed that was ever made?

A. Yes, sir.

(Testimony of Charles W. Taylor.)

Recross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Taylor, this affidavit that you made before Mr. O'Fallon was made at the time you were called to Boise to attend a session of the grand jury, was it not? A. Yes, sir.

Q. Now, where was that affidavit made?

A. I think it was in a room that Mr. Ruick occupied most of the time.

Q. Who was present when that affidavit was made?

A. Mr. Ruick was in there part of the time, but he wasn't in there all the time; Mr. O'Fallon and Goodwin were in there all the time.

Q. Who was it that told you they would send you to the penitentiary?

A. Mr. Ruick. [958—628]

Q. How many times did he tell you that?

A. I don't know; he told me that several times.

Q. I will ask you if you first made the statement substantially as made, as stated in this affidavit that you made before Mr. Rummonds, which you have just identified, Defendants' Exhibit "E." Did you tell them substantially what you stated in that affidavit?

A. Well, about as near as I could remember it.

Q. Was it after you made your first statement to them that they told you they would send you to the penitentiary? A. Yes, sir.

Q. And then did they tell you that they knew that your arrangements with Mr. O'Keefe were something different from that?

(Testimony of Charles W. Taylor.)

A. Yes, sir; they told me I was lying to them and I knew it.

Q. Told you that you was lying to them?

A. Yes, sir.

Q. As a matter of fact, you was not lying to them when you made this first statement?

A. That statement just referred to here?

Q. Yes, when you made your first statement to them down there at Boise before you made this affidavit, you was not lying to them, was you?

A. No, sir, I was aiming to tell them the truth.

Q. Did they ask you questions, and was this affidavit made up from questions and answers they asked you, this affidavit you made for Mr. O'Fallon down there at Boise? A. Yes, sir.

Q. And did they tell you that they knew that Kester and O'Keefe were in together? A. Yes, sir.

Q. And it was after that that this affidavit was made up, this affidavit that you made down there for Mr. O'Fallon and Mr. Goodwin?

A. After that that affidavit was made up? [959—629]

Q. Yes, after they told you they knew Mr. Kester and O'Keefe was in together?

A. Yes, sir; that was the last thing they done, was to make that affidavit, before I left Boise.

Q. Wasn't it a matter of fact that Mr. O'Keefe told you that Kester and some other parties were going up into the timber to take up claims?

A. Yes, sir.

Q. Mr. O'Keefe never told you that he and Kester

(Testimony of Charles W. Taylor.)

were in together and that they were going to have people locate on timber claims, did he?

A. I didn't understand it that way. He told me the second time I talked to him about it,—that was the time we went up there to take up timber claims,—and that was the time he told me he couldn't make no agreement with me.

Q. Didn't he tell you that Kester told him that that kind of agreement was against the law?

A. Yes, sir.

Q. And it was the first arrangement that you was talking to Mr. O'Fallon and Mr. Goodwin about that was embodied in this affidavit, was it not?

A. Yes, sir.

Q. Did you tell Mr. Goodwin and Mr. O'Fallon and Mr. Ruick about the second arrangement you and Mr. O'Keefe had, that he couldn't make that kind of an agreement?

A. Yes, sir, I told him that in the grand jury room.

Q. They didn't include that in your affidavit, did they?

A. I think I told him in the grand jury room; I know I told him that some time.

Q. Then your affidavit that you made for Mr. Goodwin and Mr. O'Fallon don't state all of the facts, does it?

A. Well, as near as I can remember.

Q. I mean there was some of the circumstances left out? [960—630]

A. There was some things asked me I think in the grand jury room that wasn't asked me there.

(Testimony of Charles W. Taylor.)

Q. Then this affidavit was made up from your talk with Mr. Goodwin and Mr. O'Fallon regarding your first arrangement with Mr. O'Keefe?

A. Yes, sir.

Q. And it does not refer to your second arrangement with Mr. O'Keefe, where he told you he couldn't make that kind of an agreement, that Kester told him it was against the law? This affidavit don't refer to that, you remember that, don't you?

A. No, sir, I don't think it does.

Q. After Mr. O'Keefe told you that he couldn't make an agreement with you, you considered that that arrangement you had made with Mr. O'Keefe was all off, didn't you?

A. Well, that was the way it looked.

Q. Well, wasn't that the way you understood it?

A. That was the way I understood it, that I had no agreement then.

Q. And you made no agreement from that time on until after you made your final proof?

A. No, sir, there was nothing said about it then until I got my receiver's receipt.

Q. Then, after you got your receiver's receipt, don't you remember, after reading this affidavit, that you and your brother talked about selling your claims then? A. Yes, we spoke about it.

Q. After you had made your proof?

A. Yes, sir.

Q. And you and your brother borrowed \$1100.00, did you not, and gave your note for it?

A. Yes, sir, gave our note for \$1100.00.

(Testimony of Charles W. Taylor.)

Q. That was in payment for the money you had from Mr. O'Keefe for expenses and location fee and the purchase price of the land?

A. Yes, sir. [961—631]

Q. How long was that note to run?

A. A year, I think; I am not positive.

Q. When you and your brother talked over the advisability of selling your claim going home after you made your final proof, you talked it over, didn't you? A. Yes, sir.

Q. Then you went and talked to Mr. O'Keefe about it, after you got home, the next day some time, didn't you?

A. Either the next day or the day after; it was within a day or two though.

Q. And you told him if you could get \$150.00 for the claim, over and above that note, and get your note back, you would be willing to sell, or words to that effect? A. Yes, something like that.

Q. Didn't he tell you he would give you the \$150.00, but if you had an opportunity to sell it within a year for more money you could do so, you could redeem it within a year, or something to that effect?

A. I don't remember just what he did say now.

Q. Don't you remember something of that kind occurring?

A. Something was said. He didn't say much to me about that; he was talking to my brother about it.

Q. But he said something to you, that if you could

(Testimony of Charles W. Taylor.)

sell it for more money within a year you could do so, didn't he?

A. Something or other, but he didn't talk much to me about it.

Q. Wasn't that talk when the conversation about not recording the deed came up? Didn't he say he would not record the deed for awhile, and if you could sell it for more money to someone else you could make a deed to someone else, or words to that effect?

A. Well, he said he wouldn't record the deed.

Q. In that same conversation don't you remember that he told you that if you could sell it to someone else for more money you could do so?

A. I don't remember whether he ever told me anything of the kind or [962—632] not. I didn't talk to him much after I got my receiver's receipt.

Q. But you do remember of talking it over with your brother going home, about the advisability of selling your claim?

A. Yes, sir, it was either going home or after we got home, I don't know which.

Q. And you do remember going to see your uncle, Jackson O'Keefe, about it the next day, or the day after?

A. Or the day after.

Q. And you told him that if you could get \$150.00 over and above your note, what he had loaned you, or get your note back and \$150.00, you would be willing to sell your claims?

A. Told him we would take \$150.00 and our note.

Q. And that was the first agreement you made re-

(Testimony of Charles W. Taylor.)

garding the sale of your claim, after Mr. O'Keefe told you, going up to the timber, that he couldn't make an agreement with you to buy your claims, that it was against the law?

A. That was the first time there was ever anything said about it at all.

Q. And it was the first time you ever felt that you were under any obligation to sell your claim?

A. I didn't think I was under any obligation at all.

Q. And if someone had offered you \$1,000.00 over your expenses, after you made final proof, you would have felt at liberty to take it?

A. I would have taken it too.

Q. And you would have felt under no obligation to Mr. O'Keefe or anyone else?

A. No, I don't know as I would.

Q. The only obligation would have been to pay Mr. O'Keefe back the money he had loaned you?

A. I might have spoken to him about it, and told him I was going to do it.

Q. When he told you that he couldn't make the agreement, carry out [963—633] that agreement to buy your land, that Kester had told him it was against the law, didn't he also tell you he would loan you the money to make proof on your claims?

A. Yes, sir.

Q. And you would have to give him your note for it?

A. Yes, sir, he would take our note.

Q. And you and your brother both signed one note?

A. Yes, sir, we signed a joint note.

(Testimony of Charles W. Taylor.)

Q. The note was due in a year, did you say?

A. I am not positive, but I think it was.

Q. You think it was a year's time?

A. I think so.

Q. And at the time you made that note you had no intention of selling your land, did you?

A. No, not at that time.

Q. And you had no intention of selling your claim until you and your brother talked it over, either going home or after you got home?

A. No, sir, nothing was said about it at all until after we got the receiver's receipt.

Q. I mean you in your own mind had no intention of selling your claim until you and your brother talked it over until you got home or going home?

A. I didn't know just how soon I could sell it, or anything.

Q. Then when you made that affidavit in your sworn statement, "That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but, in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, or in any way or manner, with any person or persons whomsoever, made any agreement or contract by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true, was it?

A. Yes, sir. [964—634]

Q. True at the time you made it, and at the time

(Testimony of Charles W. Taylor.)

you made your final proof, and it is still true?

A. Yes, sir.

Mr. TANNAHILL.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Taylor, who brought this affidavit to you that counsel for the defense has shown you, marked Defendants' Exhibit "E"?

A. Who brought it to me?

Q. Yes.

A. That is the first time it has been handed to me since it was made out.

Q. Well, where was it made out?

A. In the prosecuting attorney's office at Asotin.

Q. Mr. who, what is his name?

A. Mr. Rummonds, George H. Rummonds. I guess that is the one; I made one there in his office.

Q. Who asked you to make the affidavit?

A. O'Keefe, I think it was.

Q. And was that just prior to the trials in Moscow, in 1907?

A. I don't remember, but I remember it was just awhile before Mr. O'Keefe died, in the fall, I think, before he died; I am not positive.

Q. When did Mr. O'Keefe die? Mr. O'Keefe was living in May, 1907, wasn't he?

A. You have got me. I don't remember the date now; I forget just when he died.

Q. Was the affidavit made out when you went to this office? A. No, sir.

Q. You sat there while the affidavit was being

(Testimony of Charles W. Taylor.)

made out? A. Yes, sir.

Q. And notwithstanding making that affidavit you went on the stand at the trial against Kester, Kettenbach and Dwyer in May, 1907, and [965—635] testified contrary to the affidavit, did you not?

A. I don't know when it was I was on the witness-stand in Moscow; that was in May, I believe?

Q. Yes.

A. But I don't remember whether it was before that affidavit was made out or after.

Q. Wasn't it after this affidavit was made out? Was it before this affidavit was made out?

A. I guess it was before the affidavit was made out; I remember now what I was doing at the time.

Q. Did Mr. O'Keefe tell you who had asked him to get that affidavit? A. No, sir.

Q. Were you paid for making this affidavit?

A. No, sir.

Q. Were your expenses paid to the notary's office?

A. I never paid him anything. He never asked me for nothing, and I never paid him anything.

Q. The facts stated in the affidavit that I showed you as having been made before Mr. O'Fallon are true, are they not?

A. Yes, sir, I think they are, as near as I can remember.

Q. And you have told the transaction as you understand it today, have you? A. Yes, sir.

Mr. GORDON.—That is all.

(Testimony of Charles W. Taylor.)

Recross-examination.

(By Mr. TANNAHILL.)

Q. The facts stated in this affidavit which you made before George H. Rummonds, January 21, 1907, Defendant's Exhibit "E," for identification, are true as you understand it, are they?

A. Yes, sir, that is the way I understood it, as near as I can remember. [966—636]

Q. And, regardless of what may have been said in your affidavit which you made for Mr. O'Fallon or Mr. Goodwin, or any statement which you have heretofore made, you say now that you did not understand that you had any agreement or understanding with anyone to sell your claim at the time you filed your sworn statement, that is right, is it?

A. Yes, sir, that is the way; I would have felt at liberty to sell it, and if anybody had offered me any more I would certainly have took it.

Q. What I mean is, you had no contract or agreement at the time you made your filing, to sell it?

A. I was told I couldn't do that before I filed on it, so I didn't think I was under any obligation.

Q. Are you acquainted with the handwriting of Jackson O'Keefe? A. Yes, sir.

Q. I will ask you to look at that paper I now hand you, and look at the signature, and state whether or not that is the handwriting of Jackson O'Keefe, your uncle. A. Yes, sir.

Q. And I will ask you if you saw him sign that affidavit?

A. No, sir, I didn't; I don't remember seeing him

(Testimony of Charles W. Taylor.)

sign it, but that is his signature.

Q. You have seen him write, have you?

A. Yes, sir.

Q. You have received letters from him through the mail? A. Yes, sir.

Mr. TANNAHILL.—We ask that the affidavit just identified be marked Defendants' Exhibit "F," for identification.

Said above-mentioned affidavit was thereupon marked by the stenographer as Defendants' Ex. "F," for identification. [967—637]

Redirect Examination.

(By Mr. GORDON.)

Q. I show you note dated July 11, 1904, payable twelve months after date, to Jackson O'Keefe, signed C. W. Taylor and E. J. Taylor, and ask you if that is your signature to that note? A. Yes, sir.

Q. You are acquainted with the signature of your brother, are you? A. Yes, sir.

Q. Did he sign that note at the same time?

A. Yes, sir.

Q. Is that the \$1100.00 note that you have referred to as having given when you got the money from Mr. O'Keefe? A. Yes, sir.

Q. After you got the money from Mr. O'Keefe?

A. Yes, sir.

Mr. GORDON.—We offer that in evidence.

Said note was thereupon marked by the stenographer as Exhibit 25 J.

Q. You say that Mr. Ruick threatened to indict you on a number of occasions?

(Testimony of Charles W. Taylor.)

A. He told me several times that if I wasn't careful he would send me to the penitentiary. He said he had a notion to send the whole bunch there.

Q. What did he say that for? What were you doing that occasioned him to say that?

A. I wasn't doing anything; that was probably the reason he said that.

Q. You declined to answer questions before the grand jury? A. I did when I first went in.

Q. Was that when he told you he would send you to the penitentiary if you wouldn't answer questions?

A. Yes, sir. [968—638]

Q. Was that the only time he threatened to send you to the penitentiary or to indict you, when you declined to answer questions?

A. No, he told me that in his office, that if I wasn't awful careful that he would indict the whole bunch and send us to the penitentiary.

Q. Was that when you declined to give him any information at all?

A. When I told him I wouldn't answer all the questions he wanted me to.

Q. Did Mr. Ruick tell you if you didn't tell things in a certain way that he would indict you?

A. He told me I had better tell it straight, for he already knew it.

Q. Did he indicate to you that he wanted you to tell anything but the truth?

A. I don't know as he did that. He had me pretty badly scared up for awhile.

Q. After he told you that he would send you all

(Testimony of Charles W. Taylor.)

to the penitentiary and threatened to indict you, you told the statement that you have testified here to-day?

A. Yes, sir.

Q. And did you say you told more, or didn't tell quite as much?

A. Well, I think I told it all as near as I could remember, every conversation that had taken place.

Q. Then the threat was that if you didn't answer the questions that were asked you and answer them straight you would either be indicted or sent to the penitentiary, is that correct?

A. That is the way I understood it, yes.

Q. And thereupon you proceeded to tell what you knew about the transactions?

A. Yes, sir, I thought the easiest way for me was to tell it as straight as I could. [969—639]

Q. That is all that he told you? A. Yes, sir.

Q. And after you told it as straight as you could was there any threats then to send you to the penitentiary or indict you?

A. He never talked to me any more about it.

Q. Did anybody else threaten you?

A. No, sir; Mr. Ruick was the man.

Q. Did Mr. O'Fallon threaten you?

A. No, I don't remember that he did; Mr. Ruick was the man.

Q. That was before you made any statement at all, was it?

A. That was at the time I made that statement, or just before I made it.

Q. How long after that was it that you made the affidavit for Mr. O'Fallon and Mr. Goodwin?

(Testimony of Charles W. Taylor.)

A. After he threatened me there?

Q. Yes. A. It was the same day.

Q. That was just before you left—

A. In the afternoon, before I left Boise at night; I think I left in the night-time.

Q. Had you been before the grand jury then?

A. Yes, sir; in the morning I had been before the grand jury, in the morning.

Q. Mr. Ruick had his talk with you before you went to the grand jury room?

A. He talked to me before, and then in the grand jury room, and then after we came out again.

Q. And you testified practically the same before the grand jury as you did when Mr. O'Fallon wrote the affidavit, only you gave more information before the grand jury, is that correct?

A. I don't remember whether I gave more or not. They had me in there quite awhile; it seemed to me about as long as in the other room making out the affidavit. [970—640]

Recross-examination.

(By Mr. TANNAHILL.)

Q. How long was you in making out this affidavit, this affidavit of two pages, one page and half?

A. I don't remember; I was in the office two or three hours that afternoon.

Q. How many times did they threaten to send you to the penitentiary before you finally gave this statement as they wanted it?

A. He threatened several times that afternoon.

Q. Now, as a matter of fact, Mr. Taylor, what Mr. Ruick wanted was for you to give a statement and

(Testimony of Charles W. Taylor.)

testify as he wanted you to, regardless of the facts, didn't he?

A. That is the way it looked to me; he said just as well tell it straight, he knew it anyway.

Q. This affidavit isn't the truth, is it, that you gave to Mr. O'Fallon and Goodwin?

A. A whole lot of it is, as well as I could remember.

Q. That isn't the whole truth, is it?

A. I think there was some things in there that wasn't exactly straight; that was the reason he threatened me.

Q. They were talking to you and threatening you about three hours before they finally got you to make that affidavit, were they not?

A. I had been in the office all afternoon.

Redirect Examination.

(By Mr. GORDON.)

Mr. GORDON.—I will offer this affidavit in evidence. We offer in evidence the affidavit that has been identified by Mr. Charles W. Taylor as having been taken and sworn to before S. H. O'Fallon, Special Inspector, July 13, 1905.

Mr. TANNAHILL.—We object to it on the ground that it is irrelevant, incompetent and immaterial, and it is an attempt to impeach their own [971—641] witness.

Mr. GORDON.—Q. I will ask you, Mr. Taylor, to read that affidavit that has just been offered, line for line, and state wherein that affidavit isn't true, and doesn't comport with the facts as they really are.

A. I said it was true as near as I could remember it, a minute ago.

(Testimony of Charles W. Taylor.)

Q. This affidavit is?

A. Yes. Still there might be things in there that wasn't exactly right, but then as near as I could remember then and as near as I remember things now, these affidavits I have sworn to, I aimed to tell the truth in them as near as I could remember then.

Q. Now, as you read them now are there any facts in that affidavit that I have just handed you that are not the honest, truthful state of facts?

A. Here is something I don't remember anything about, is whether I said it was to go to Kester and Kettenbach.

Q. That doesn't say it was to go to Kester and Kettenbach. Read it again.

A. It says, "when I proved up on it it was to go to, Mr. Kester and Kettenbach." No, I take it back; their name was not mentioned, that is it; I take it back.

The SPECIAL EXAMINER.—You read that some time ago and said that was correct.

Mr. GORDON.—Q. You have read this affidavit through now, have you? A. Yes, sir.

Q. Now, I will ask the stenographer to read the question again so that you can answer it.

The question was thereupon read by the stenographer as follows: "Now as you read them now are there any facts in that affidavit that I have just handed you that are not the honest, truthful [972—642] state of facts?"

A. No, I think that is the straight truth, as near as I can tell it.

Q. You can remember it?

(Testimony of Charles W. Taylor.)

A. As near as I can remember it.

Recross-examination.

(By Mr. TANNAHILL.)

Q. Now, Mr. Taylor, I call your attention to this statement in this affidavit, and pay particular attention to it. In this affidavit you state: "This land was to go to Jackson O'Keefe when I proved up. I was to get \$150.00 above all expenses for my claim." Now, that was not true according to your final arrangements with Mr. O'Keefe, was it?

A. That was the first agreement that we had.

Q. That was the first agreement?

A. Yes, sir, that was the affidavit I swore to up there.

Q. But it wasn't the final arrangement with Mr. O'Keefe?

A. We never had no more arrangements with him at all.

Q. He had called that agreement off, had he not?

A. Yes, he said he couldn't do that. There was nothing more ever said about it.

Q. Why didn't you put in this affidavit, or ask O'Fallon and Ruick and Goodwin to put in this affidavit that that agreement was called off by Jack O'Keefe, and he told you he couldn't carry out that agreement? Why is it that that don't appear in this affidavit? A. That is more than I can tell now.

Q. Isn't it a fact that they didn't want that in that affidavit and told you to leave it out?

A. No, they never told me to leave it out.

Q. But you told them that this agreement was

(Testimony of Charles W. Taylor.)

called off, did you not? A. I don't remember.

[973—643]

Q. Didn't you say you either told them that this agreement was called off, or that you testified to it in the grand jury room?

A. I don't know whether I told them in the grand jury room. All I remember about I told them is there, what they have got down in this affidavit there.

Q. Do you remember whether you told them whether that agreement was called off by Jack O'Keefe? A. No, I don't remember.

Q. Now, this statement here: "Mr. O'Keefe told me before I filed on my claim that he and George H. Kester were in together, and that he was going to get some parties to take up timber claims for Kester." Now, that statement isn't true, is it. Do you remember? Just read the question. Now pay particular attention to the question.

Mr. GORDON.—(Handing witness paper.) This is the whole affidavit, so that you can remember.

Mr. TANNAHILL.—"Mr. O'Keefe told me before I filed on my claim that he and George H. Kester were in together, and that he was going to get some parties to take up timber claims for Kester."

A. As near as I can understand it, that they were going up in there together to take up timber claims.

Q. Oh. That he and O'Keefe were going up together?

A. It don't appear that way here, but that is—

Q. That is the way you understand it?

A. Yes, sir.

Q. And the way you remember it now?

(Testimony of Charles W. Taylor.)

A. It don't appear here in the affidavit.

Q. Then the affidavit isn't correct in regard to that, is it?

A. Well, it has about the same meaning, I suppose.

Q. There is a good deal of difference in that, whether they were going up together to get timber claims, or going to take up timber claims for Kester. But you say your understanding of it was, and the meaning you intended to convey, that they were going up to the timber [974—644] together, that is right, is it?

A. Well, they were going up with a crowd, with parties to take up timber claims, and us boys was taking up for Jack, the way I understood it, and the other parties was taking it up for George.

Q. O'Keefe didn't tell you that, did he?

A. I don't know just how it did come up; they had me all muddled up so many times. I have made out so many affidavits that I have got all mixed up. I aimed to tell them the truth.

Q. I know, but I am trying to straighten out the conflict in your statements. There are so many conflicts in your statements that I am trying to get at what is the exact truth, regardless of any statement you have made heretofore. Now, this statement here isn't true, is it: "It was my understanding when I filed on my claim that when I proved up it was to go to Mr. Kester." Now, that statement isn't true, is it? It is about the eighth line from the bottom of the first page, counting up from the bottom. "It was my understanding when I filed on my claim that

(Testimony of Charles W. Taylor.)

when I proved up it was to go to Kester.”

A. The way I understood it, the way I have been understanding it all the time, it was to go to him and that he conveyed everything to Kester himself.

Q. But you just testified that afterwards Mr. O’Keefe called that deal off, that he couldn’t carry out that agreement, and that you had no other contract or agreement regarding it.

A. There was nothing more ever said about it.

Q. That was long before you filed on your claim, wasn’t it?

A. It was the time we was going into the timber or coming out of the timber.

Q. Well, you went to the timber and came out before you filed? A. Yes, sir.

Q. Well, then, at the time you filed on it it wasn’t your understanding that it was to go to Kester or anyone else?

A. Well, there was nothing more said about it. I looked at it then [975—645] just the same as I do now, that if I had the claim now and had a deed to it, and if anybody offered me \$1,000.00 or anything more than that I would sell it and pay them the money I borrowed from them.

Q. But that isn’t according to this affidavit. (Reading:) “It was my understanding when I filed on my claim that when I proved up it was to go to Kester.” That wasn’t your understanding at all when you filed on your claim, was it?

A. I don’t remember how it was now. It is in this affidavit.

(Testimony of Charles W. Taylor.)

Q. Regardless of this affidavit; I don't care whether this affidavit is true or false, but regardless of this affidavit, when you filed on the claim you didn't understand that it was to go to Kester, did you?

A. After he told us that we never gave it another thought; we considered that we wasn't under no obligation.

Q. And that is the truth, is it?

A. At the time we went to the land office.

Q. Then your affidavit in regard to that isn't true?

A. Well, there is a mistake somewhere, either on my part or—

Mr. TANNAHILL.—I see. That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. When you went to the land office and filed, what did you really understand was going to be done with your claim, what did you intend to do with it after you made proof?

A. I aimed to sell it, of course.

Q. Whom did you think you were going to sell it to?

A. I knowed I could sell it to O'Keefe if I didn't sell it to nobody else, but I never give it any more thought, as I already told you; after he told us that I never talked to him any more about it.

Q. But even when you filed you knew he wanted it and would take it, didn't you? [976—646]

A. I knew I could get rid of it to him, that was all

(Testimony of Edgar J. Taylor.)

there was to it.

Mr. GORDON.—That is all.

Mr. TANNAHILL.—That is all. [977—647]

[Testimony of Edgar J. Taylor, for Complainant.]

EDGAR J. TAYLOR, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Edgar J. Taylor? A. Yes, sir.

Q. And you are a brother of Mr. Charles W. Taylor, who has just testified? A. Yes, sir.

Q. You took up a claim under the timber and stone act in April, 1905, did you not?

A. Yes, sir, I believe I did.

Q. I show you timber and stone land sworn statement, signed Edgar J. Taylor, dated April 25, 1904, and ask you if you signed that paper and filed it in the land office at Lewiston, Idaho, about the date it bears?

A. I signed a paper there; I couldn't swear that that was the paper.

Q. Well, there is no question about that. I show you nonmineral affidavit of Edgar J. Taylor. Is that your signature to that? A. Yes, sir.

Q. Dated April 25, 1904. I show you the testimony of Edgar J. Taylor, taken at final proof, dated July 11, 1904, and ask you if that is your signature to that? A. Yes, sir.

Q. I show you the cross-examination of Edgar J. Taylor taken at the same time, and ask you if that

(Testimony of Edgar J. Taylor.)

is your signature to that? A. Yes, sir.

Q. Mr. Taylor, who first spoke to you about taking up a timber claim?

A. My brother, Charles W. Taylor.

Q. What did he say to you? [978—648]

A. He said if we would go up and take up a timber claim now we could get the money to take it with.

Q. Did he say anyone had sent him to you for that purpose?

A. I don't recollect whether he said they sent him or not; he had been talking to O'Keefe.

Q. He is your uncle? A. Yes, sir.

Q. Now, state what he said.

A. Well, I don't know as I can remember just what was said.

Q. Well, tell it as near as you can.

A. He said we could take up a timber claim at the same time and get the money to pay for it, and sell it for \$150.00 above cost, and sell it as soon as we got title.

Q. Is that just as he told it?

A. As near as I recollect, yes.

Q. Who was to furnish the money?

A. We was to get the money from Mr. O'Keefe.

Q. For all your expenses? A. Yes, sir.

Q. Where were you to get the \$150.00?

A. Well, we were to get it from Mr. O'Keefe.

Q. That was after you made your final proof?

A. Yes, sir.

Q. What were you to do with the land?

A. Well, we could sell it to him for that price over

(Testimony of Edgar J. Taylor.)

and above that, if we wanted to, after we got title.

Q. Now, did you go to see Mr. O'Keefe about this claim?

A. Well, I never seen Mr. O'Keefe about it at all. I met him down here at the depot when we started to go to Pierce City, that was the first time we met him after that.

Q. Did you have a talk with him?

A. Not at that time I didn't. [979—649]

Q. Had you had a talk with Mr. O'Keefe about this timber claim before that?

A. Not before that; no, sir, I had not.

Q. What did Mr. O'Keefe say to you?

A. He simply said he would furnish us the money to get the claim on and take our notes, and if we wanted to sell after we got title he would give us \$150.00.

Q. Over and above expenses? A. Yes, sir.

Q. And it was with that understanding that you took the claim up?

A. That we were to sell the claim—he said he bought no claims without title.

Q. Did he tell you who told him not to buy claims without title?

A. I don't remember now that he did.

Q. Did you know how much the claim was to cost you?

A. Well, we didn't at that particular time.

Q. Who paid your expenses from here to Pierce?

A. He paid them himself, or furnished the money for them, and took it in on a note afterwards.

(Testimony of Edgar J. Taylor.)

Q. Now, wait until we get to that note. The note was taken almost a year after that, wasn't it?

A. I don't remember whether the note was taken when we made filing or when we made proof, I don't recollect.

Q. How many notes did you give—just the one?

A. Just one.

Q. You and your brother joined in the note?

A. Yes, sir.

Q. That was the day you made proof?

A. I think it was.

Q. And you went up to see the claim the preceding October, did you? A. Yes, sir.

Q. Who were of that party? [980—650]

A. Joe Prentice, Mr. Dammarell, Mr. O'Keefe, my brother and I.

Q. And you went from here to Pierce?

A. Yes, sir.

Q. And from Pierce where did you go?

A. Went out to see the timber claim from Pierce City.

Q. How far is the timber claim from Pierce?

A. About twenty miles, as near as I can recollect.

Q. And you went from Pierce to the timber claim how? A. Horseback.

Q. Who furnished the horses for you?

A. Mr. O'Keefe paid the hire of them. We got the horses at Orofino.

Q. You paid none of the expenses going to the timber claim or returning, did you? A. No, sir.

Q. That was all furnished by Mr. O'Keefe?

(Testimony of Edgar J. Taylor.)

A. Yes, sir.

Q. Did he furnish it for all of the party?

A. I believe he did.

Q. And he gave you a round trip ticket when you left Lewiston?

A. I don't recollect whether we got a round trip ticket or bought another ticket to come back on. I don't know.

Q. Now, how long were you gone from Lewiston?

A. About four or five days, something like that.

Q. This was in October that you went up to see this land, was it? A. Yes, sir.

Q. October, 1903, and you filed April 25, 1904, according to your sworn statement. That is correct, is it? A. Yes, sir.

Q. Now, was any reason given why you didn't file directly after you returned from viewing the land?

A. Why, I don't remember whether there was or not. They told us at [981—651] the land office that we would be notified through a paper that would be furnished in Pierce City, and we got the notice.

Q. Was anything said about Mr. Kester or Mr. Kettenbach by Mr. O'Keefe at the time you talked to him about this land?

A. No, sir, not that I remember of.

Q. You knew that Mr. Kester and Mr. O'Keefe were in partnership at that time, did you not?

A. Yes, sir.

Q. Were they connected with the Cloverland Irrigation Company? A. Yes, sir.

Q. Who was the president of that company?

(Testimony of Edgar J. Taylor.)

A. Mr. Kester, I think.

Q. George Kester? A. Yes, sir.

Q. And what was Mr. O'Keefe in that concern?

A. I am not positive; I think he was secretary, but I am not positive.

Q. Now, when Mr. O'Keefe talked to you about taking up a claim was Mr. Kester's name mentioned?

A. No, sir.

Q. Did Mr. O'Keefe tell you that he wanted to accumulate a number of timber claims?

A. He did not tell me that.

Q. Most of the arrangements with you were made with your brother, were they not?

A. Yes, sir, they were made with my brother.

Q. Who notified you of the time that you should file your original papers?

A. To make final proof, you mean?

Q. No. I mean the first papers you filed.

A. Why, I don't remember who did give the notice to me; I don't recollect that. [982—652]

Q. Did Mr. O'Keefe notify you?

A. I don't remember whether he did or not.

Q. And you came down to Lewiston several days before you filed? A. Yes, sir.

Q. How long? A week?

A. Something like about a week.

Q. And you formed in line at the land office?

A. Yes, sir.

Q. And what was the number of the position you held in the line?

A. I think it was fifth, but I ain't positive.

(Testimony of Edgar J. Taylor.)

Q. Do you remember who stood immediately in front of you?

A. I think my brother was ahead of me.

Q. Do you remember who was behind you?

A. No, sir, I do not.

Q. Was Mr. Dammarell and Mr. Prentice in that line also?

A. I think Mr. Prentice was, but I don't remember whether Mr. Dammarell was or not.

Q. Was Mr. O'Keefe also in that line?

A. Yes, sir.

Q. He took up a claim himself, did he?

A. He did.

Q. Do you remember where this sworn statement and nonmineral affidavit you have identified were prepared, who prepared those papers?

A. I don't remember ever seeing them until in the land office.

Q. Do you remember who brought them to the land office for you?

A. No, I do not. I think I got the paper from Mr. West, but I ain't positive.

Q. Did you pay any filing fee?

A. I think we paid filing fees there.

Q. Did you pay them or did Mr. O'Keefe pay them?

A. I think I got the money from Mr. O'Keefe to pay them.

Q. Do you remember how much it was? [983—653]

A. No, I do not.

Q. Was it \$12.00 or somewhere about there?

(Testimony of Edgar J. Taylor.)

A. Well, I couldn't say positively; it was somewhere along in there, but I couldn't say positive what it was.

Q. Now, after you made your original filing, several months later, you made your final proof?

A. Yes, sir.

Q. And where did you get the money with which to make your proof?

A. Got the money from Mr. O'Keefe.

Q. Where did you get it?

A. Somewhere about the land office.

Q. What do you call the land office? You mean the building the land office was in? A. Yes, sir.

Q. Did you get it in the Lewiston National Bank?

A. No, sir, I was not in the bank. It was in the building, or in the hall, I don't remember which.

Q. How much did he give you?

A. Well, I don't recollect how much money was given to us at the time.

Q. Do you remember how much you paid in the land office?

A. Paid four hundred and something, it seems to me like, but I don't recollect what the price was.

Q. And he gave you the full amount of money you paid in the land office, did he? A. Yes, sir.

Q. Did he give it to you in cash? A. Yes, sir.

Q. Did he give you the money at that time to pay a location fee? A. Yes, sir.

Q. How much was that?

A. That was \$100.00. [984—654]

Q. Who located you on this land?

(Testimony of Edgar J. Taylor.)

A. Mr. Dwyer.

Q. You had no arrangement with him to pay him a location fee, did you?

A. No, sir, I never made no arrangements.

Q. Did you say how much Mr. O'Keefe gave you to pay the location fee?

A. He gave me \$100.00 to pay for the location fee.

Q. What did he tell you to do with it?

A. Told me to pay it to Mr. Dwyer.

Q. Did you go out and hunt Mr. Dwyer up, or was he on the spot?

A. I don't remember whether I paid him right away or not, but I paid him I think around the land office there somewhere, after I got the money.

Q. Do you remember the denomination of the money?

A. It was a hundred dollar bill (laughing).

Q. Do you remember whether it was an old or a new bill? A. I think it was a new bill.

Q. You gave that hundred dollar bill to Mr. Dwyer, did you? A. Yes, sir.

Q. Before you paid the \$400.00 that Mr. O'Keefe had given you in the land office at final proof, did you go over some questions with Mr. O'Keefe that would be asked you at the land office?

A. I never went over no questions except what I swore to when I was making my proof.

Q. Did you go over them before you went to the land office with O'Keefe? A. No, sir.

Q. You have said several times, as I understand you, that Mr. O'Keefe gave you the money you paid

(Testimony of Edgar J. Taylor.)

in the land office for your final proof?

A. Yes, sir. [985—655]

Q. Do you remember whether you discussed with Mr. O'Keefe the propriety of your swearing at the land office that that was your own money?

A. Why, I don't remember that I did. I remember there was something said about borrowed money was the same as your own money.

Q. Who said that?

A. I don't remember whether Mr. O'Keefe said it or who it was.

Q. Who else were you talking to?

A. We were talking together in the crowd there at the land office, I don't remember who.

Q. All the money you paid in the land office at final proof you got from Mr. O'Keefe, is that correct?

A. Yes, sir.

Q. Then your statement that you had part of the money laid away and borrowed the balance isn't true, is it?

A. Well, I didn't use any of the money I had laid away; I had money but part of it I had borrowed.

Q. Here is the question: "Where did you get the money with which to pay for this land and how long have you had the same in your actual possession?" "Answer. Part of it I had laid away and part of it I borrowed." That wasn't exactly correct, was it?

A. No, sir.

Q. Do you remember making a statement for Mr. Goodwin relative to your timber claim?

A. I made a statement, I don't know whether it

(Testimony of Edgar J. Taylor.)

was to Mr. Goodwin or Mr. Ruick, one time.

Q. Was that statement true?

Mr. TANNAHILL.—We object to that, as the witness has a right to read over the statement before answering the question, it being a long time ago, and as the statement is in the possession of counsel it is no more than right that he should let the witness read it over before asking him to answer the question.

[986—656]

Mr. GORDON.—Q. Can you answer that?

A. I don't know what is in the statement now; I couldn't say.

Q. Did you endeavor to tell him the truth?

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Answer the question.

A. Well, as near as I remember, I think I tried to tell the truth in the statements, but I don't remember what is—

Q. Do you remember testifying at the trial of United States vs. Kester, Kettenbach and Dwyer, at Moscow, in the spring of 1907, Mr. Taylor?

Q. And I read from page 921 of record 1605, referred to in the stipulation made the first day of the hearing in this case. Do you remember whether or not you testified at that trial whether or not your brother told you that you were to take up a claim and convey it to your uncle after you made proof and receive \$150.00 for it?

Mr. TANNAHILL.—We object to that, as that isn't his testimony.

Mr. GORDON.—If you will just wait till I ask the

(Testimony of Edgar J. Taylor.)

question. I will read the questions and answers; I didn't want to start to reading all these things along here.

WITNESS.—I don't remember testifying to it in that way.

Mr. GORDON.—Q. Well, what did you testify to, if you remember?

Mr. TANNAHILL.—We object to that, as the witness has a right to read his testimony before he attempts to answer such a question as that.

Mr. GORDON.—Q. Well, state what the understanding was that you had with Mr. O'Keefe with reference to taking up this claim.

A. Well, the understanding I had was with my brother, that we could sell it for \$150.00 over and above costs after we had title.

Q. Who were you to sell it to?

A. We could sell it to Mr. O'Keefe. [987—657.]

Q. Didn't you feel under any obligation to sell it to Mr. O'Keefe? A. I did not.

Q. You assumed, then, that he was just going to furnish all the money to take this up, and you were under no obligation?

A. I considered that I was under obligation for the note I gave for the money.

Q. But you didn't give the note until after you got the money and you had been over the land?

A. Yes, sir.

Q. And all your expenses had been paid?

A. Yes, sir.

Q. I will ask you whether or not these questions

(Testimony of Edgar J. Taylor.)

were asked you, and whether or not you made the answers I shall read: "Question. You took up a stone and timber claim, didn't you?" "Answer. Yes, sir." "Question. How did you come to take it up, Mr. Taylor?" "Answer. Why, my brother told me I had a chance to take up a timber claim." "Question. Did he say who told him?" "Answer. He said my uncle had told him." "Question. What?" "Answer. He said my uncle had told him, Mr. O'Keefe." "Question. Did he tell you the particulars of the terms and so forth?" "Answer. He told me I could get \$150.00 over and above expenses if I wanted to take it, after I got title." "Question. Who were you to get the \$150.00 from?" "Answer. From my uncle." "Question. And what were you to do to get the \$150.00?" "Answer. Well, I was to take up the land and deed it to him after I got title." "Question. Did you know at that time certainly who it was to go to?" "Answer. I supposed it was going to my uncle, O'Keefe, that is the only one I knew about at that time." Were those questions asked you and those answers made by you?

A. I believe they were.

Q. And they were true, were they not?

A. Yes, sir.

Q. Now, was it under that arrangement that you took up this timber [988—658] claim?

A. It was under the arrangement that we could take the land—

Q. I asked you was that the arrangement under

(Testimony of Edgar J. Taylor.)

which you were to take up the timber claim. Answer yes or no.

Mr. TANNAHILL.—You can answer that yes or no and then explain it afterwards.

The SPECIAL EXAMINER.—Just answer yes or no first, and then if you have anything further to say you can say it if it is proper.

A. Well, I will say yes. The only explanation,—there was nothing said about selling the land until after we got title unless we wanted to.

Q. But all that was said about it any time was before you went to see the land, wasn't it?

A. Yes, sir.

Q. And you made your proof, you remember that?

A. Yes, sir.

Q. They gave you a receipt in the land office, did they not? A. Yes, sir.

Q. What did you do with that receipt?

A. The receiver's receipt?

Q. Yes, sir. A. I have it in my pocket.

Q. What did you do with it when you got it?

A. I turned it over to Mr. O'Keefe.

Q. Why didn't you tell that before when I asked you? Did you have any purpose in telling me that you had it in your pocket now?

A. That was what I understood you to mean.

Q. When you gave it to Mr. O'Keefe what did he say about it?

A. He wanted us to give a bond for a deed to secure the note, and we turned the receiver's re-

(Testimony of Edgar J. Taylor.)

ceipts over to him and gave a bond for a deed at the time.

Q. When was that? [989—659]

A. That was either the day or the next day after we made proof, I don't remember which.

Q. Did he ever return that receiver's receipt to you? A. Yes, sir.

Q. Do you know what he did that for?

A. He told me one day that the receiver's receipt was up to the courthouse and to go and get it, or he would go and get it, I don't remember which.

Q. Did he give you any reason why you should have it?

A. I don't remember any reason, no, except that it was there, and I could go get it, or he would go get it, I don't remember which.

Q. Did he tell you the inspectors were around and if they asked you to show them that and tell them you had it?

A. I don't remember that; I knew there was inspectors around.

Q. Did you go to him and ask him for it?

A. No, sir.

Q. He came to you and told you about it?

A. Yes, sir.

Q. How long was that before the inspector came to see you?

A. The inspector never came to see me at that time at all.

Q. When was it the inspector came to see you?

A. Never until I went to Boise.

(Testimony of Edgar J. Taylor.)

Q. When was that? A. 1905, I believe.

Q. How long had the inspectors been around then?

A. As near as I recollect, it was about maybe three weeks before.

Q. Then you signed a bond for a deed, as I understood you? A. Either the day or the day after.

Q. Were you given any money then?

A. We were given \$150.00.

Q. Was that deed made in Lewiston here?

A. No, sir, it was made in Asotin City.

Q. State the transaction of making that deed. Was anything said [990—660] between you and Mr. O'Keefe between the time you first talked to him about it and the time you signed the deed, about what you should do with the land?

A. Nothing, only going up from Lewiston after we made final proof he said he would like us to give him a bond for a deed to secure this deed, and that was all that was said that I remember of.

Q. Was that the only paper you have ever executed? A. Yes, sir.

Q. And he gave you the \$150.00? A. Yes, sir.

Q. Didn't you know at that time that you had parted with all the interest you had in the land?

A. No, I didn't understand it that way.

Q. You say he told you the next day he wanted you to come down and execute a bond, is that correct?

A. Yes, sir, he said he wanted us to give a bond for a deed to secure the note.

Q. Didn't he give you the note back at the same time?

(Testimony of Edgar J. Taylor.)

A. No, sir. I don't remember getting the note back until after we went to Boise.

Q. When was that?

A. That was the first trip to Boise, in 1905.

Q. Didn't he tell you he wouldn't record that paper you executed there that day until after you got patent?

A. Yes, sir.

Q. As a matter of fact, didn't he give you back that note when he gave you the \$150?

A. No, sir, I don't remember getting that note back until after we got back from Boise.

Q. Who did you get it from then?

A. Mr. O'Keefe.

Q. What did you understand he was giving you the \$150.00 for?

A. I don't remember now what was said when he gave me the \$150.00, [991—661] more than we wanted the \$150.00 if we gave bond for a deed, because we needed the money, and I understood we could redeem that any time we could pay the note back.

Q. Who did you understand that from?

A. From Mr. O'Keefe.

Q. Don't you know that you made a deed and not a bond for a deed?

A. I was told it was a bond for a deed; I did not read it over.

Q. And that in getting that \$150.00 you parted with all interest in the title you had?

A. I didn't understand it that way when we were doing it.

(Testimony of Edgar J. Taylor.)

Q. You expected to get more money, did you?

A. I expected we had a right to redeem it, or get more money if there was a raise in the land.

Q. Wasn't that the original understanding, that you were to get—

A. If I wanted to sell the timber claim.

Q. And when you took the \$150.00 wasn't it your idea that you were carrying out that transaction?

A. No, I thought I had a right to redeem.

Q. You have testified at two trials, haven't you?

A. Yes, sir.

Q. And isn't this a new idea of yours, redeeming it? Have you ever testified to that at either of the other trials? A. I don't know as I did.

Q. When did you get that notion in your head?

A. I have had that notion in my head all the time.

Q. Before you came down to Boise to testify at the trial in February last did you read your testimony at the former trial? A. I believe I did.

Q. Where did you get it?

A. My brother gave it to me.

Q. Where did your brother get it?

A. He got it from a lawyer down in Asotin, I believe. [992—662]

Q. I understood you to say your uncle paid all the expenses you had in connection with taking up this timber claim? A. Yes, sir.

Q. Have you ever made any other deed except the one you said you signed when you thought you were signing a bond for a deed? A. No, sir, I have not.

Q. Have you ever been asked for any other deed?

(Testimony of Edgar J. Taylor.)

A. No, sir.

Q. When was it you found out you didn't have any interest in that property and that you had made a deed for it?

A. I believe Joe Prentice was telling me right after the inspectors was around.

Mr. TANNAHILL.—No. Joe Prentice wasn't up here.

Mr. GORDON.—Who did tell you? Have you ever talked to Mr. Pence about this?

A. Mr. Prentice.

Q. You say that you never saw that note until after you went to Boise after you first gave it?

A. I don't remember ever seeing it after that until after I came back from Boise.

Q. Who gave it to you then? A. Mr. O'Keefe.

Q. Did you turn it over to the inspector?

A. No, sir. I turned it over to Mr. Ruick at Moscow.

Q. Now, the first time you talked with Mr. O'Keefe about taking up a timber claim what did he say to you?

A. I don't remember what was said; the first talk I had with him was on the road up there to Pierce City.

Q. What did he say?

A. I remember we were talking about taking timber claims and selling them, and he told me he couldn't buy no timber lands without the title, he wouldn't buy no land without title. [993—663]

Q. Did he tell you he couldn't buy, or couldn't

(Testimony of Edgar J. Taylor.)

make any bargain?

A. He said he couldn't buy no land without title; I don't know whether he said he couldn't bargain or not.

Q. Reading from your testimony given at the trial of Kester, Kettenbach and Dwyer, given at Boise in February last, reading from page 176, I ask you whether or not this question was asked you: "When did you have the conversation that you have in mind?" "Answer. I think I talked with him on the road up to Pierce City." That has reference to Mr. O'Keefe. "Question. And what was that conversation?" "Answer. He was telling me that he couldn't make no bargain to buy no lands until we got title, but that when we got title he would give \$150.00." Do you remember that answer being made by you to that question?

A. I don't know now just how the question was asked.

Q. Well, is that the fact? Is that what he did tell you?

A. As near as I recollect, yes, it is, as near as I recollect, but I can't recollect just the words he used either now or then, either.

Q. Now, without any suggestion by you to Mr. O'Keefe about any agreement, did he just make that statement to you, that he couldn't make a bargain with anybody to buy the land before they made final proof?

A. I don't remember what it was, whether I asked him any questions about the land, or how the con-

(Testimony of Edgar J. Taylor.)

versation did come up, I don't recollect.

Q. Do you remember this question being asked you, continuing: "And without any suggestion, Mr. O'Keefe said that he would not make any agreement with anybody, and he would not buy any land until there was title to it?" "Witness. I don't remember how the conversation came up. We were talking there. He was telling me that he couldn't bargain to buy no land, and advised me not to bargain, it seems to me. I don't know just how the conversation came up." Do you remember that question being asked and that answer made by you, Mr. Taylor? [994—664] A. Yes, sir.

Q. And it was correct, was it? A. Yes, sir.

Q. Now, the first time you talked with Mr. O'Keefe, on the way to Pierce, that was the time he told you he would furnish all the expenses and the money for you to pay for this land, is that correct?

A. Well, I believe that my brother told me this before we started, that Mr. O'Keefe would furnish the money for us to go and take up the land and make the proof.

Q. And on the way to Pierce, did you talk to Mr. O'Keefe about that?

A. I think we had a conversation over it, but I don't recollect our conversation now at all.

Q. When you had your filing papers prepared, or when they were prepared, did you give anybody the description of the land to prepare them for you, or employ anybody for that purpose? A. No, sir.

Q. This note, marked Complainant's Exhibit 25J,

(Testimony of Edgar J. Taylor.)

dated January 11, 1904, payable in one year, to the order of J. O'Keefe, in the sum of \$1,100.00, signed C. W. Taylor and E. J. Taylor, is that your signature to that? A. Yes, sir.

Q. And that is the note that you referred to as having given Mr. O'Keefe?

A. Yes, sir; that is the same note.

Q. When you made your filing, to whom did you understand you were to convey this land?

A. When I made the filing?

Q. Yes.

A. You mean who I understood I would sell the land to?

Q. Yes.

A. I didn't understand then that I would sell it to anybody; I understood I could sell it to Mr. O'Keefe for \$150.00. [995—665]

Q. Did you understand that Mr. O'Keefe had some connection with Mr. Kettenbach or Kester?

A. No, I did not.

Q. I will ask you whether or not you ever made an affidavit to that effect, before Mr. O'Fallon or Mr. Goodwin.

A. I don't remember that I ever did.

Q. Do you remember whether or not you told Mr. Francis M. Goodwin in July, 1905, that you understood from Mr. O'Keefe that your land was to go to Kester and Kettenbach?

A. I don't remember of stating it now.

Q. Well, was that your understanding?

A. I understood that if we wanted to sell the land,

(Testimony of Edgar J. Taylor.)

after we got title we could sell it to Mr. O'Keefe for \$150.00.

Q. Wasn't it your understanding that Mr. O'Keefe was operating for somebody else?

A. No, sir; it was not then that I remember of. I may have had such an understanding, but I don't remember at this time.

Q. Did Mr. O'Keefe give you to understand that he wasn't going to buy that land, that he was operating for somebody else?

A. I don't remember him giving me that kind of an understanding.

Q. And you never told anybody that?

A. I don't remember now that I ever did; if I did I don't remember it at the present time.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Edgar J. Taylor, dated April 25, 1904, the nonmineral affidavit of Edgar J. Taylor, the testimony of Edgar J. Taylor given on final proof, the cross-examination of Edgar J. Taylor, at final proof, all of which papers have been identified by the witness Edgar J. Taylor, the testimony of the witnesses at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated July 11, 1904, the notice for publication, dated July 25, 1904, certified copy of the patent issued to Edgar J. Taylor, dated the [996—666] 31st day of December, 1904, all relating to the entry of lots 3 and 4, and the east half of the southwest quarter of section 18, township 38 north of range 6 east, Boise meridian.

(Testimony of Edgar J. Taylor.)

Said above documents were thereupon marked by the stenographer as Exhibits 26, 26A, 26B, 26C, 26D, 16E, 26F, 26G, 26H, 26I, 26J, 26K, and 26L.

Mr. TANNAHILL.—The defendants severally object to all of the papers relating to the final proof just offered, upon the ground that they are irrelevant and immaterial. The defendants severally waive any further identification of the papers.

Mr. GORDON.—You never made but one deed to this claim, did you?

A. That is all I ever made.

Q. That was the paper that you understood was a— A. Bond for a deed.

Q. A bond for a deed? A. Yes, sir.

Q. I show you original deed, signed Edgar J. Taylor, dated July 12, 1904, conveying to William F. Kettenbach and George H. Kester, in consideration of \$1.00, lots 3 and 4, and the east half of the southwest quarter of section number 18, in township 38 north of range 6 east of Boise meridian, containing 157 acres, and I ask you if you signed, executed and acknowledged that deed before George W. Bailey, notary public of Asotin, Washington, July 12, 1904?

A. I signed a bond for a deed at that time, but I never read it over.

Q. That is the paper you signed?

A. That is my signature there, but I never read it over. I was told it was a bond for a deed and I thought it was at the time.

Mr. TANNAHILL.—It is stipulated and agreed that the witness, Edgar J. Taylor, executed the deed

(Testimony of Edgar J. Taylor.)

just identified, on July 12, 1904, a deed from Edgar J. Taylor, a bachelor, of Asotin, Washington, to William F. Kettenbach and George H. Kester, conveying lots 3 and 4, and [997—667] the east half of the southwest quarter of section 18, in township 38, north of range 6 east, Boise meridian, containing 157 acres, and that the same was signed by the witness, Edgar J. Taylor, and witnessed by J. O'Keefe and George W. Bailey, and acknowledged July 12, 1904, before George W. Bailey, a notary public for Asotin County, Washington, and recorded at the request of the Lewiston National Bank in book 84 of deeds of Nez Perce County, State of Idaho, on page 326, on the 20th day of January, 1906.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Taylor, Mr. Gordon was asking you concerning your testifying in two previous trials, and suggested that this was the first time you had thought of your understanding that you had a year, or until the maturity of the note to redeem that land when you gave that bond for a deed. I am reading now from page 935 of the record of the United States against Kester, Kettenbach and Dwyer, case No. 1605, on appeal: "Question. Your understanding with Mr. O'Keefe was that if you could sell that claim for more than \$600.00 before the maturity of that note you would be entitled to the excess, did you not, the amount you could get over the \$600.00?" "Answer. If I could get more for it?" "Question. Yes." "Answer. Well, when I gave a bond for a

(Testimony of Edgar J. Taylor.)

deed I thought I would have a right to redeem it and get more for it if I could at the time I gave the bond for the deed." Do you remember so testifying at Moscow?

A. I don't remember just the words I testified there, but that was my understanding, when I gave the bond for a deed.

Q. And that has been your understanding all the time?

A. It has been my understanding all the time.

Q. And this is not the first time you ever thought about it? A. No, sir.

Q. Now, you say Mr. O'Keefe told you that he would not buy any [998—668] land until after you got title to it? A. Yes, sir.

Q. Mr. Taylor, you understood that you had no arrangement, contract or agreement with anyone to sell this land at the time you filed on it, or at the time you made final proof, did you?

A. Yes, sir; that was my understanding.

Q. And if you had had an opportunity to sell it to someone else for a thousand dollars more you would have felt at liberty to sell it to them, would you not?

A. I would.

Q. Then the affidavit you made at the time you filed your sworn statement, "That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in

(Testimony of Edgar J. Taylor.)

any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true at the time you made it, was it? A. Yes, sir.

Q. And it was true at the time you made your final proof? A. Yes, sir.

Q. And is still true? A. Yes, sir.

Q. Do you remember of making an affidavit before C. L. Thompson, notary public for Latah County, Idaho, on the 30th day of November, 1906 (handing witness paper)?

A. I remember making a statement there; I don't remember what is in the statement.

Q. You can look through it if you care to. Did you read it over at the time, or was it read to you by the notary public?

A. I believe Mr. Moore was the one that read it to us. [999—669]

Q. He read it to you, did he? A. Yes, sir.

Q. And you signed it in the presence of the notary?

A. Yes, sir, I think I did.

Q. And you recognize that as being the same statement that you heard read and signed at that time?

A. I recognize my signature on the paper.

Q. Is that your brother's signature at the bottom of it too, here? A. Yes, sir.

Q. C. W. Taylor? A. Yes, sir.

Q. Now, look through the paper and see if you recognize that as being the same paper that you

(Testimony of Edgar J. Taylor.)

signed at that time. (Witness apparently reads paper.) Do you recognize that as being the same statement? A. Yes, sir.

Q. And the statements you made in there are true, are they?

A. I think they are, as near as I understand them.

Q. Mr. Taylor, regardless of what you may have said in any of these statements or affidavits, or any of your evidence that you might have given heretofore, I will ask you to state whether or not you understood that you had any understanding or agreement with anyone that you was to sell your land at the time you filed on it?

A. I did not. My understanding was that I was simply borrowing the money to file on it and had a right to hold it.

Q. And you supposed you had a right to redeem this land within a year? A. Yes, sir.

Q. After you signed that paper which was supposed to be a bond or a deed?

A. I don't remember whether there was a specified time to redeem it in, but I had a right to redeem the land.

Q. If you had had an opportunity to sell it for more than that you had a right to sell it?
[1000—670]

A. Yes, sir, that was my understanding at that time.

Mr. TANNAHILL.—The defendants severally ask to have the affidavit just identified by the witness marked as a proper exhibit for identification.

(Testimony of Edgar J. Taylor.)

Said affidavit was thereupon marked by the stenographer as Defendants' Ex. G, for identification.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Taylor, who presented that affidavit to you?

A. This affidavit, you mean?

Q. Who presented that affidavit to you for signature?
A. Mr. Moore, I believe.

Q. What Mr. Moore?

A. That is all I know about it, that lawyer, Mr. Moore, of Moscow.

The SPECIAL EXAMINER.—Frank L. Moore, of Moscow?

A. I don't know his initials at all.

Mr. GORDON.—Q. Is he the gentleman that represented the defendants at the trial at Moscow?

A. Yes, sir, I believe he was.

Q. Did he have the affidavit prepared when he came to see you?

A. I don't recollect whether it was prepared when I seen him or not; I don't remember whether it was prepared then or afterwards.

Q. I mean did he bring it with him when he came, or was it prepared after you talked to him?

A. I don't remember whether it was prepared while I wasn't with him or whether it was prepared after or while we was talking.

Q. Where were you employed, and by whom, at the time you made arrangements to take up a timber claim?

A. I was working in Cloverland; I don't remem-

(Testimony of Edgar J. Taylor.)

ber now, but I think I was working for a man by the name of Howell. [1001—671]

Q. For what salary?

A. I don't recollect, but I think it was a dollar and a half a day.

Q. You weren't a married man? A. No, sir.

Mr. GORDON.—That is all.

At this time an adjournment was taken until tomorrow morning at ten o'clock. [1002—672]

On Wednesday, the 31st day of August, 1910, at ten o'clock A. M., the hearing was resumed.

[**Testimony of David S. Bingham, for Complainant.**]

DAVID S. BINGHAM, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are David S. Bingham, are you?

A. Yes, sir.

Q. Speak so this gentleman here can hear you.

(Indicating the Reporter.) A. Yes, sir.

Q. Where do you reside?

A. Asotin, Washington—that is, Asotin county.

Q. Where did you reside in April, 1904?

A. Asotin County, Washington.

Q. What was your occupation at that time?

A. I was working for O'Keefe & Kester at that time.

Q. That is, Jackson O'Keefe?

A. Jackson O'Keefe.

Q. And George H. Kester?

(Testimony of David S. Bingham.)

A. George H. Kester.

Q. And what was your business at that time that you were engaged in with them?

A. Well, under an irrigating proposition at Cloverland.

Q. And what was your employment with them?

A. I was their foreman.

Q. And at a salary of how much?

A. \$75.00 a month, I think.

Q. At that time you were married? A. Yes, sir.

Q. Did you have any children? [1003—673]

A. Yes, sir.

Q. How many? A. Two.

Q. You took up a claim under the timber and stone act, did you not? A. Yes, sir.

Q. I show you timber and stone lands sworn statement dated July 25th, 1904, signed David S. Bingham, and ask you if you signed that paper and filed it in the land office at Lewiston at about the date it bears? That is the original sworn statement I show you. A. That is my signature.

Q. And that is the first paper you filed in the land office? A. Yes.

Q. I show you the nonmineral affidavit bearing the same date. Is that your signature to that?

A. Yes, sir.

Q. I show you the testimony of David S. Bingham given at the final proof July 15th, 1904. Is that your signature? A. Yes, sir.

Q. I show you the cross-examination of David S. Bingham taken at the same time. Is that also your

(Testimony of David S. Bingham.)

signature? A. Yes, sir.

Q. Now, Mr. Bingham, I shall appreciate it if you will state in your own way all the circumstances connected with the taking up of this claim, who, if anyone, induced you to take it up, and other matters in connection therewith.

Mr. TANNAHILL.—The defendants severally object to any evidence in relation to the witness' taking up a claim, in so far as it relates to bills 388 and 407, on the ground that it is irrelevant and immaterial, the entry of the witness not being involved in these two particular cases.

Mr. GORDON.—Proceed and answer the question.
[1004—674]

WITNESS.—Ask the question again, please.

The last question was thereupon repeated by the Reporter.

WITNESS.—Well, I had that in my own mind in regard to taking up a claim; but so far as the inducement is concerned, why I got that from Jackson O'Keefe.

Mr. GORDON.—Q. Now, state what he said and what you did in connection with it.

A. He had been connected with Kettenbach and Kester, as I understood, in regard to the land proposition up there, or the timber proposition, and he says to me one time—

Mr. TANNAHILL.—Now, we object to the witness' understanding, and move to strike out the witness' statement as to what the witness understood, on the ground that it is immaterial, irrelevant,

(Testimony of David S. Bingham.)

and not evidence.

Mr. GORDON.—Answer it in just your own way.

The SPECIAL EXAMINER.—Go right on, Mr. Bingham, and make the statement, and speak loud enough for Mr. Hamer, the Reporter, to hear you.

WITNESS.—He wanted to know the reason why I didn't take up a timber claim myself; that I had been up in that country—he says, “You have been mining up there,” and he says, “You have used your money up there,” he says, “and I don't see why you don't get some of it back.” “Well,” I says, “I have been thinking about that, Jack,”—I called him Jack for short— and I says, “I think probably I may.” “Well,” he says, “you had better go down and file,” just in that way, which I did; I filed.

Mr. GORDON.—Q. And you had been over the land some time prior to this?

A. Prior to that, yes, sir.

Q. No one went over it with you specially, to point the land out to you? [1005—675] A. No, sir.

Q. Now, was there anything said between you and Mr. O'Keefe or any of the other defendants relative to what you would do with the land after you took it up? A. No, sir, only with O'Keefe.

Q. And what was that?

A. As far as Kettenbach and Kester and Mr. Dwyer is concerned, I never talked land to them one way or the other. What business I done I done with O'Keefe.

Q. Now, what was your understanding with O'Keefe?

(Testimony of David S. Bingham.)

A. My understanding was, I had to take this claim up, and he was to have the prior right of buying it after I proved up.

Q. Was anything said about the price?

A. Not at the time, no, sir.

Q. Did you know whether or not he was trying to and was assembling a great many timber claims? I mean getting a great many together? A. Yes, sir.

Q. And was he engaged in that alone or was he in with some one?

A. I think he was in with somebody.

Q. Who? A. Kester and Kettenbach.

Mr. TANNAHILL.—We object to the statement as to the witness' conclusions. It is not a statement of fact.

WITNESS.—Oh, I couldn't swear positive.

Mr. GORDON.—Q. From what did you reach this conclusion, Mr. Bingham—from what circumstance that you observed?

A. Why, I would call it a middleman; I would consider Mr. O'Keefe a middleman, working for Kester and Kettenbach.

Mr. TANNAHILL.—I move to strike out the answer of the witness as a conclusion and not a statement of fact. [1006—676]

Mr. GORDON.—Q. And what did he do that led you to believe that?

A. His conversations with me.

Q. Now, can you remember the gist of any of those conversations, any remark dropped here or—

A. We had several conversations in regard to the

(Testimony of David S. Bingham.)

claim after I had taken it up.

Q. Well, had you observed any of these things that led you to believe in this connection you have related, prior to you taking up a timber claim?

A. Nothing more or less than he said he was connected with Kettenbach and Kester, and would like to have a prior right to buy my claim, if I felt disposed to dispose of it, and that he had others, and mentioned others that he had bargained for.

Q. And that was before you ever filed that he discussed those matters? A. Yes, sir.

Q. Now, do you remember how long you were away from your business when you came down to file?

A. Well, I don't recollect exactly the number of days; I think probably three or four; something like that there.

Q. I mean when you came from Asotin down here to file?

A. Down here to file, yes, sir. I came from Cloverland, rather.

Q. From Cloverland? A. Yes.

Q. And you were still working for Kester and Kettenbach at that time, were you not?

A. Yes, sir—and O'Keefe.

Q. I mean Kester and O'Keefe, excuse me.

A. Yes.

Q. And was that time that you were away taken out of your salary?

A. No, sir; I never lost no time at all whatever in regard to working for them. I was getting \$75.00 a month straight time. [1007—677]

(Testimony of David S. Bingham.)

Q. And do you remember how many days you were down to Lewiston when you made your proof?

A. I venture to say probably two or three days, maybe, something of that kind; maybe four; I don't know.

Q. Were you down to Lewiston on any other occasions besides those two, relative to this claim?

A. I used to come down occasionally, yes.

Q. No, but I mean concerning this claim?

A. No, sir.

Q. Now, when you came to Lewiston to make your filing papers—this first paper that you have identified—were you furnished a description of the land?

A. Yes, sir.

Q. Who gave you that? A. I. N. Smith.

Q. And now state the circumstances of your going to I. N. Smith's office. Did you know Mr. Smith?

A. I was directed in there by O'Keefe.

Q. Was O'Keefe in Lewiston at that time?

A. Yes, sir.

Q. And did you come to Lewiston with Mr. O'Keefe?

A. I believe we came down in a private rig together.

Q. And did Mr. O'Keefe go to the office of Mr. I. N. Smith with you?

A. No, sir; he went part way to the office and pointed it out to me and told me to go in there.

Q. Did you tell Mr. Smith what you came for?

A. I went in there and took my turn with the balance of them, yes, sir. There was some more ahead of me.

(Testimony of David S. Bingham.)

Q. Did you give him any advice or information relative to the papers? A. No, sir. [1008—678]

Q. That he was preparing? A. No, sir.

Q. Did you give him the description?

A. No, sir.

Q. Did you name the final proof witnesses?

A. No, sir.

Q. And did you pay him any fee? A. No, sir.

Q. Now, did you pay your expenses from Cloverland down here at the time you came to prove up?

A. Yes, sir.

Q. Well, was that advanced to you, or was that your own money? A. That was my own money.

Q. That was on your own responsibility?

A. Yes, sir.

Q. And you paid a filing fee at the land office?

A. Yes, sir.

Q. And with whose money did you pay that?

A. My own.

Q. And were you ever reimbursed for that?

A. Yes, sir.

Q. Did you have an understanding or arrangement to that effect; or was it just a settlement that you had? A. A settlement.

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Well, he has answered it.

Q. Was there a great many people lined up at the door of the land office the morning you filed, and several days before? A. Yes.

Q. Do you remember how many there were?

(Testimony of David S. Bingham.)

A. I didn't count them.

Q. Well, I mean were there a dozen, or 50, or 100?

[1009—679]

A. Oh, I should venture to say there was somewhere about 35 or 40 or 50—I don't know. They were strung down quite a ways.

Q. And did you join that line?

A. I joined the line, yes, sir.

Q. And do you remember anything relative to the place that you held in that line, about how far you were from the beginning of the line? A. Yes, sir.

Q. What was your number? A. I couldn't say.

Q. I mean approximately?

A. Oh, probably I was about 8 or 9 or 10 or 12, maybe.

Q. And do you have any recollection of who was immediately in front of you in the line?

A. Yes, sir.

Q. Who?

A. Not right immediately in front of me, but I was in—I think Mrs. George Kester and Miss Kester; she married a man—I believe her name is Ford at present. I think she was next to me.

Q. Do you remember who was behind you?

A. It was a blind man over here, I think it is Justice, or some of that outfit, and Bert Ferris; we were mixed up there together. I couldn't exactly tell.

Q. Now, how long were you in that line?

A. Why, till my turn came. They only allowed one in the land office at a time.

Q. I know; but you are getting to the end of it. I

(Testimony of David S. Bingham.)

mean how long were you in the line till your turn came—two or three days?

A. No. I was placed in the line the same day that I came down; they was holding the line there some way or another; I guess they reserved my place for me, or something or other.

Q. Do you know who reserved your place?
[1010—680]

A. I done no business with anybody only O'Keefe, and whatever he said I done.

Q. And you didn't pay anyone for holding your place in line? A. No, sir.

Q. And you joined that line the morning the land office opened and the morning you filed?

A. Yes, sir. It opened at ten o'clock, I believe.

Q. And you had gotten in there some time just prior to that? A. Yes, sir.

Q. Now, did you have any talk with anyone about paying a location fee?

A. About paying a location fee?

Q. Yes. A. Yes, sir.

Q. Well, with whom did you have that talk?

A. Jack O'Keefe.

Q. And to whom were you to pay the location fee?

A. Well, which? What do you mean—in regard to a filing fee?

Q. No; I mean the location fee—the cruiser?

A. Oh, the crusier. Yes; I was to pay that to Mr. Dwyer, I believe—William Dwyer.

Q. Did Mr. William Dwyer locate you?

A. He claimed he did, yes, sir.

(Testimony of David S. Bingham.)

Q. Well, now, did he claim that to you?

A. Yes, sir.

Q. And had you had any connection with Mr. Dwyer concerning this matter at that time?

A. None whatever.

Q. Sir? A. None whatever.

Q. And what did he say when he claimed the right of a location fee from you? [1011—631]

A. He didn't claim it till the day I came down to prove up.

Q. Now, state what happened that day?

A. He was one of my witnesses; O'Keefe was another. I came down if I ain't mistaken, I won't be positive but I think I proved up on the 4th of August, or somewheres about that; I wouldn't say for certain exactly what time it was. Anyway,—

Q. One moment. From your proof papers it appears that you made proof on the 15th of July.

A. The 15th of July? Then I didn't prove up then, did I? Was it the 15th of July?

Q. Yes.

A. Well, it might have been. I don't know exactly whether it was July or along about the first of August.

Q. Well, now, state what you did?

A. Well, I came down to Asotin from Cloverland, and I said to Jack, I said, "To-morrow is my day," I says, "for proving up," and he says, "Yes; you go down," he says, "to Lewiston," he says, "to-night or in the morning," and I says, "Are you going to be one of the witnesses?"—he was advertised as one

(Testimony of David S. Bingham.)

of the witnesses. "No," he says, "I can't possibly go down, but you see Dwyer and Dwyer will fix it up all right with you."

Mr. TANNAHILL.—I want it understood that we object to all this conversation not in the presence of the defendants or either of them, and that the objection runs to all evidence of a like nature, so that we won't have to repeat it.

Mr. GORDON.—Yes; that may be understood.

Q. Now, continue, Mr. Bingham.

A. So I came down to Lewiston and put my team up in the Red Front Livery-stable—

Q. The Red Front, or White Front?

A. No, the Red Front,—it is Mallory & Lydon—and came up in front of the Lewiston National Bank, and I met Mr. Dwyer there. [1012—682]

Q. Now, what transpired there?

A. Oh, I should say about ten or half-past ten o'clock, something like that, he called me off to one side and says, "You are proving up to-day?" and I says, "Yes; that is what I came down for," and he put his hand in his pocket and pulled out a roll of greenbacks.

Q. And do you remember how much was in that roll?

A. He counted out \$100.00, and asked me to hold it. I held it in my left hand, and he took it out of my hand and stuck that down in his pocket, and he says, "That's mine."

Q. Did he say what that was his for?

A. For locating me.

(Testimony of David S. Bingham.)

Q. And then did you have any discussion with him about it?

A. He turned around to me, and "Now," he says, "here," he says, "here is \$400.00—four hundred and odd dollars," I forget now just exactly; he says, "You go up," he says, "and I will be up pretty quick, and we will prove up," and I put the money in my pocket and walked across the street and came back again and in a few minutes I went up in the office and he was there—in the Receiver's Office.

Q. And was that when you made proof?

A. Yes, sir.

Q. And was that the money that you made your proof with? A. Yes, sir.

Q. Did you and Mr. Dwyer discuss the matter of the questions that would be asked you at the land office when you made your proof?

A. Not a word—not a word. He instructed me to go up, and that was all.

Q. And you went up and you paid your four hundred and some odd dollars at the land office?

A. Yes, sir.

Q. And they gave you a receipt for it?

A. Yes, sir.

Q. As I understood you to say, that was the same money that you [1013—683] had gotten from Dwyer? A. Yes, sir.

Q. Just a few moments before? A. Yes, sir.

Q. Now, what did you do with the receipt they gave you at the land office?

A. I have it in my trunk, and neglected fetching

(Testimony of David S. Bingham.)

it down. I have got it there, though.

Q. Have you had it ever since they gave it to you?

A. Yes, sir. I can get it for you.

Q. Oh, no, I don't care for that. You never lost it?

A. No, I never lost it. Also some letters, too, from the land office, as to the patent.

Q. Did you give any note or other evidence of indebtedness for the money that you received from Mr. Dwyer? A. No, sir.

Q. Were you asked to give any?

A. No, sir.

Q. Now, did you afterwards made a deed for this land? A. Yes, sir.

Q. To whom did you make it?

A. Jack. O'Keefe.

Q. Did you make a deed to Jackson O'Keefe, or did you negotiate with Jackson O'Keefe and make a deed to Kester and Kettenbach?

A. That I couldn't say.

Q. Did you read the deed? A. No, sir.

Q. And did you ever make more than the one deed for the claim? A. No, sir.

Q. Mr. Bingham, I show you a deed dated July 26th, 1904, made by David S. Bingham, and Lillian, his wife, to J. O'Keefe, and ask you if that is your signature to that deed? [1014—684]

A. Yes, sir.

Q. And that is the signature of your wife?

A. Yes, sir.

Q. And you acknowledged it before George W.

(Testimony of David S. Bingham.)

Bailey on the 26th of July, 1904?

A. Yes, sir. I forgot the date, but I remember the circumstance very well.

Mr. GORDON.—It is stipulated by and between the parties that David S. Bingham and wife Lillian, on July 26th, 1904, executed and acknowledged a deed, conveying to J. O'Keefe in consideration of one dollar, the southeast quarter of section 17, township 39 north, of range 5 east, Boise meridian, containing 160 acres; that said deed was acknowledged before George W. Bailey, of Asotin, Washington, July 26th, 1904; that said deed was filed for record January 18th, 1906, at the request of the Lewiston National Bank, and recorded in Book of Deeds 84, at page 315, of the records of the Recorder of Nez Perce County, Idaho.

Mr. TANNAHILL.—The defendants severally waive any further identification of the document, but object to the evidence in so far as it relates to bills No. 388 and 407, upon the ground that the entry of the witness is not involved in these two particular actions.

Mr. GORDON.—Q. Now, Mr. Bingham, will you state the circumstances of you signing that deed which you have just identified?

A. Why, I was living at Cloverland, my wife and myself, and running a kind of a hotel, and stopping on the company's place—O'Keefe & Kester's—and one day this man Bailey—George W. Bailey—and Mr. O'Keefe came up there, and O'Keefe said, "We might as well settle this here proposition up in re-

(Testimony of David S. Bingham.)

gard to that land," although we had a talk prior to that in regard to it, and he wanted to know if I wanted to sell; and there was a ten-acre tract up there—orchard tract—that I wanted to get hold of, and I had quite a bit of money coming to me, and I thought if I could get the money out of this timber claim I [1015—685] could buy this ten acres; and I had a talk with my wife, and she thought that we had better sell and take this ten acres, so I told him I would sell to him, and he says, "Well, now," he says, "the arrangements is," he says, "to let you have over and above all expenses," he says, "that you was *to down* there, why" he says, "\$150.00." "Well," I says, "I might as well take it, Jack., along with the balance of them." He told me he had made similar arrangements as far as the Taylor boys, I guess.

Q. He what?

A. He bought from the Taylor boys, and Dammar-ell, and Prentice, and those boys up there.

Q. And did he give you the \$150.00 then?

A. No, sir; he gave me a check for \$150.00.

Q. And was it his own check?

A. It was his own check; yes, sir.

Q. And was the deed already prepared when he and Mr. Bailey came there?

A. Yes, sir; that is, Mr. Bailey done some writing afterwards. I don't know whether he made out the deed there or not. He was sitting at the table, writing, in the dining-room. I couldn't say whether he had a blank deed, or whether he made the deed out when he came up there. I couldn't say for that.

(Testimony of David S. Bingham.)

Anyway, we acknowledged the deed before Mr. Bailey there.

Q. Was there anything said at that time, or any time during this other conversation referred to, as to whether or not Mr. O'Keefe was purchasing that for somebody else?

A. No, there wasn't anything said in regard to that.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of David S. Bingham, dated April 25th, 1904, the nonmineral affidavit of David S. Bingham, the testimony of David S. Bingham on final proof, the cross-examination of David S. Bingham at the final proof, all of which papers have been identified heretofore by the witness, [1016—686] the testimony of the witnesses on final proof, and the cross-examination of them, the affidavit of publication, the Receiver's Receipt and the Register's Certificate, dated July 15th, 1904, and a certified copy of the patent issued to David S. Bingham December 31st, 1904, all relating to the entry of the southeast quarter of section 17, in township 39 north, of range 5 east, of Boise meridian.

Mr. TANNAHILL.—The defendants severally object to all of the final proof papers being admitted in evidence, upon the ground that they are matters relating to the final proof, and occurring long subsequent to the filing of the sworn statement, and are irrelevant and immaterial. The defendants severally waive any further identification of the papers.

Said documents were thereupon marked by the

(Testimony of David S. Bingham.)

Reporter as Exhibits 27, 27A, 27B, 27C, 27D, 27E, 27F, 27G, 27H, 27I, 27J, 27K, 27L, and 27M.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Bingham, the details of the matters relating to your taking up this timber claim, and the circumstances leading up to it, are not as clear to you now as it was shortly after the time, is it?

A. Why, George, I don't know; I think everything is just about as clear to me as ever it was in regard to the proposition. I think everything is as clear.

Q. Do you remember of making an affidavit before George H. Rummens, a notary public for Asotin County, Washington, on January 30th, 1907, in relation to the circumstances of your taking up this claim? (Handing a document to the witness.)

A. Yes, that is my signature.

Q. Just read the affidavit over and see if you recall the circumstances. (The witness read said document.)

A. Yes; that is my signature.

Q. Does that refresh your recollection as to some things that [1017—687] occurred in connection with your taking up this timber claim, Mr. Bingham?

A. Not in particular; no, sir.

Q. The statements you made in this affidavit were substantially correct, were they?

A. I can't say exactly that they are.

Q. Do you recall any particular part of them that is not correct?

A. Yes, there is. I can read it over.

(Testimony of David S. Bingham.)

Q. What particular part of them is it that is not correct?

A. I don't think that I made the statement in the first part there, although I might have at the time; I wouldn't be positive in regard to it. I made the statement that I was a native born citizen of the United States. That's right. That I was well and personally acquainted with Jackson O'Keefe and William Dwyer and George H. Kester and W. F. Kettenbach. I didn't consider I was acquainted, if I recollect; that I wouldn't make that kind of a statement, because I wasn't personally acquainted with them.

Q. You knew of them, did you not?

A. Yes, sir; I knew of them.

Q. Knew them when you seen them?

A. Yes, sir.

Q. You had a speaking acquaintance with them, did you?

A. Yes, sir. And also it says here "with respect to entries of Government lands made by Edgar Dammarell, Joseph H. Prentice, Charles W. Taylor and Edgar Taylor at the Lewiston, Idaho, land office, under the timber and stone act, and which said cause is prosecuted upon an indictment returned by the Federal Grand Jury at a term of said District Court holden in the City of Boise, Idaho, in July, A. D. 1905." I know nothing at all about that, as far as that is concerned.

Q. Well, that is simply descriptive.

A. Yes, and it says here that I entered 160 acres of

(Testimony of David S. Bingham.)

timber land at the Lewiston land office in April, 1904, under the timber and stone [1018—688] act, and made proof thereon about the middle of July, 1904, and sold and conveyed the same to the said Jackson O'Keefe on or about the latter part of August or first part of September. I done that, too; I will admit that part of it. "The facts and circumstances of my acquiring the same and the sale thereof, are to the best of my recollection, about as follows: Sometime of the fall of 1903 Jackson O'Keefe and the above named Dammarell, Prentices and Taylor boys, went into the timber to locate on timber claims. Shortly after their return I met Mr. O'Keefe and asked him why he didn't let me know that they were going into the timber and told him that I had never used my right under the timber and stone act and that I would like to get a claim." I acknowledge that I did have that talk with him. "He informed me that they had located on what is known as Reed's Creek in the Pierce City Country, and also said that he had seen Ike Bingham's"—that is a brother of mine—" (my brother's) cabin and I told him I was well acquainted with that country, having mined, prospected and hunted there three different summers. He told me to see one William Dwyer"—which I acknowledge that I never did after that in regard to this—

Q. Well, he told you to see William Dwyer?

A. Yes, sir—"William Dwyer and maybe he could put me onto a claim. I afterwards had a talk with Dwyer"—There is a mistake there; that I never did. If I so stated, I swore to something that wasn't so.

(Testimony of David S. Bingham.)

Q. Well, you had a talk with Dwyer before you made your proof, did you not?

A. No, sir—yes, sir; in the morning before I made my proof.

Q. Yes?

A. Yes, sir. “I got a filing in April, 1904. After I had filed I had a conversation with O’Keefe in which I asked him (O’Keefe) if he was investing in timber up there. He said, yes, he was intending to buy a little. I asked him what he was paying for a quarter section and he said: ‘I can’t talk about the price or I can’t talk about buying [1019—689] until after you prove up.’” There is a mistake there, because he did talk to me before in regard to it.

Q. Well, you and he had that conversation, did you?

A. He came up there twice or three times a week; he would fetch up buyers to buy orchard tracts up there, and he never came up there but what I talked to him in regard to this. “I got the money from Dwyer with which to make proof.” That’s true. “For a time prior to and after I made my final proof I had been running a hotel and feed stable at Cloverland, Washington”—I was, and also working for the company,—“Cloverland, Washington, and at the time I made my proof I had sufficient money on my person with which to make final proof.” That’s true, I had. “But this money was a part, in fact, practically the entire capital which I used and needed to carry on my business.” That is correct; there is

(Testimony of David S. Bingham.)

no lie there. "I had an opportunity to borrow the money from Mr. Dwyer to make the proof, so I borrowed the money from him and put it in my pocket with my other money." That's right. I had other money in my pocket when I came down there, but Dwyer came from the bank and gave me the other money. "I then went to the land office and in making proof paid for the land out of the money in my pocket, so I can't say for certain whether I paid for it with the Dwyer money or the money which belonged in my business." I couldn't—it was all together. "I knew at the time that I made proof that I would have to pay Dwyer \$100.00 for locator's fees and I did not have sufficient money on hand to pay this sum in addition to the value of the land and I would have to borrow other money to use in carrying on my business, so to place the loan all in one party I got the money from Mr. Dwyer." Yes, sir; I swore to that.

Q. The affidavit is substantially correct, then?

A. Well, outside of one or two items there at the first.

Q. Just the ones you called attention to?

A. Yes.

Q. Now, you had no talk with Mr. O'Keefe, then, in regard to [1020—690] selling him the land, until after you proved up?

A. He asked me if he could have the prior right of buying this land.

Q. Did you say the "prior right" or the "preference right"?

A. The preference right or the prior right. I un-

(Testimony of David S. Bingham.)

derstood if I wanted to sell that he wanted the first chance.

Q. And that was the talk you had with him?

A. Yes, sir.

Q. And that is all the talk you had with him in regard to buying? A. Yes, sir.

Q. And then after you proved up, some little time, he came up to Cloverland and asked you if you wanted to sell? A. Yes, sir.

Q. And you told him that you would have to see your wife? A. Yes, sir.

Q. And you did go and see your wife?

A. Yes, sir.

Q. Then you asked him how much he would give, or something to that effect, didn't you?

A. Yes, sir.

Q. And he told you that he had given Dammarell and Prentice—that he had bought their claims, and he had? A. And the Taylor boys, also.

Q. Yes, and the Taylor boys; he had bought their claims, and he had given them \$150.00 over and above expenses? A. Yes, sir.

Q. And that he would give you the same?

A. Yes, sir.

Q. And then did you talk with your wife again after you had talked with him about the price?

A. Yes, sir.

Q. And she told you that she thought you had better sell? [1021—691]

A. Yes, sir.

Q. If you could buy the other piece of land up

(Testimony of David S. Bingham.)

there? A. Yes, sir.

Q. And you went back and told O'Keefe that you would take it? A. Yes, sir.

Q. And the bargain was all made in regard to the sale of your land there that day—the day that you sold it?

A. The day that I sold it, yes; we closed the bargain that day.

Q. And Mr. Bailey was with him? A. Yes, sir.

Q. And he sat down at the table and did some writing, and either drew up this deed, as you testified on your direct examination, or was doing some writing? A. Yes, sir.

Q. Now, an examination of the deed, Mr. Bingham, shows that it was all made out and signed in the same kind of ink. (Exhibiting said deed to the witness, who examined the same.) After looking at the deed, state whether or not it is your best recollection that that deed was drawn up there at that time—by Mr. Bailey, at that time? A. I think it was.

Q. You think it was? A. Yes, sir.

Q. Now, your best recollection, then, is that the deed was made out there by Mr. Bailey on that occasion? A. Yes, sir.

Q. Then, Mr. Bingham, the affidavit that you made at the time that you filed your sworn statement, “that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any

(Testimony of David S. Bingham.)

agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the [1022—692] Government of the United States may inure in whole or in part to the benefit of anyone except myself," that affidavit was true, was it? A. Yes, sir.

Q. True at the time you made it? A. Yes, sir.

Q. And at the time you made final proof?

A. Yes, sir.

Q. And it is still true? A. Yes, sir.

Q. Now, you said, Mr. Bingham, that you understood that O'Keefe and Kester and Kettenbach was in together. O'Keefe didn't tell you that they were in together, did he? A. Yes, sir.

Q. What did he say?

A. He said that he was working as a middleman; the same as you might consider him a middleman. He says, "If these things goes through, these claims," he says, "I will get a certain per cent out of them."

Q. Where did he tell you that?

A. Why, it was our general conversation with him and I whenever we talked about timber.

Q. Can you remember where he was when he told you that?

A. I never seen Mr. O'Keefe only when he came up to Cloverland. He always came there, and if I wasn't out on the ditch at dinner time, I would see him, and he would dictate to me what to do, and such as that.

Q. That was after you had made your final proof, was it not?

(Testimony of David S. Bingham.)

A. Oh, it was the general talk every time he came up there.

Q. Well, he wasn't talking about buying your claim before you made final proof, was he?

A. Why, as I stated before, after I put up my money and took a claim, why he wanted the prior right, providing I wanted to sell.

Q. He wanted the preference right? [1023—693]

A. He wanted the preference.

Q. That was all he said?

A. That was all he said until after I proved up, and then he was dead anxious to get the claim.

Q. Then your conversation in regard to buying your claim for Kester and Kettenbach was after you made final proof?

A. No; he always told me—our conversation was that he was in with Kester and Kettenbach.

Q. Well, now, was that before or after you made final proof?

A. Both—both. It was the general supposition that he was doing business for Kester and Kettenbach.

Q. Well, I don't want your conclusion about it, Mr. Bingham; I only want what was said.

A. Well, that's what he said, and I'm telling you what I know, that's all there is about it.

Q. Well, I know. If Jack. O'Keefe was here, then I wouldn't be so particular about it; but he isn't here. A. No, he isn't here.

Q. So I want the circumstances.

A. Yes. I am giving it to you just as I know it, that's all.

(Testimony of David S. Bingham.)

Q. Now, where were you when he said this?

A. It must have been at Cloverland, because I hardly ever came down unless I had business in Asotin or Lewiston. I was attending to business for them up there.

Q. But you don't remember the particular circumstances? A. I don't remember about that.

Q. And you don't remember the language that he used? A. No, nor the date.

Q. And you don't remember who was present?

A. No, I don't. He hardly ever talked to me in regard to the timber with anybody else present.

Q. And you are just giving your recollection of the conversation? [1024—694]

A. Just my recollection of the conversation, that's all.

Q. But you had no agreement to sell him this land before you made your final proof?

A. No; that is, no written agreement, only he asked the prior right for the land.

Q. Preference right? A. Preference right.

Mr. TANNAHILL.—We ask to have the affidavit of David S. Bingham just identified by the witness marked Defendants' Exhibit "H," for identification.

Said affidavit was so marked.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Bingham, who presented that affidavit to you that you have just identified?

A. I don't recollect.

Q. Do you remember who brought it to you?

(Testimony of David S. Bingham.)

Was anyone with the notary public when you signed that?

A. Not that I know of. It is something new to me. I don't remember about it. That is my signature, and I have signed lots of papers up there, and I don't know how I came to sign that, I am sure.

Q. Do you remember ever having seen that affidavit before and having read it before?

A. No, sir.

Q. Do you know Mr. Frank Moore, an attorney, of the firm of Forney & Moore? A. Yes, sir.

Q. Do you remember whether or not he was along with the notary? A. I think not.

Q. Do you remember him ever coming to see you to talk about this case?

A. Not in Asotin or Lewiston; he did in Moscow.
[1025—695]

Q. I understood you to say that Mr. Dwyer never went over this claim with you?

A. Yes, sir, I said that.

Q. And you never had any transaction with Mr. Dwyer relative to taking up this claim other than the day you made final proof? A. No, sir.

Q. And now was any reason given to you by Mr. Dwyer why you should pay him a location fee?

A. No, sir.

Q. And you simply paid him that because Mr. O'Keefe told you to pay him?

A. He simply took it out of this money that he handed to me. He put it in his pocket, and handed me the balance of it.

(Testimony of David S. Bingham.)

Q. If it had been your \$516.00, you wouldn't have given him that location fee, would you?

A. No, sir; I would have had no reason to.

Q. As long as it was his own money, you didn't care whether he handed it to you and took it back, or not; is that it?

Mr. TANNAHILL.—We object to that as leading and suggestive.

WITNESS.—I didn't care what he done with it.

The SPECIAL EXAMINER.—What is the answer?

WITNESS.—I didn't care what he done with it.

Mr. GORDON.—Q. Now, when you first talked to Mr. O'Keefe about taking up this land, was that the time you had the conversation about the prior right, or the preference right?

A. Yes, sir, we talked about it at that time.

Q. As a matter of fact, Mr. Bingham,—I am not asking you now whether you had an absolute contract or agreement with Mr. O'Keefe at that time—but as a matter of fact wasn't it your understanding that you were going to convey that to O'Keefe after you got it?

A. That is my recollection. [1026—696]

Q. You would not have taken it up if you hadn't had that understanding, would you,—at that time?

A. No, I don't believe I would at that time.

Q. And the matter turned out just exactly as you understood it would when you first talked to Mr. O'Keefe about it?

A. Yes, sir.

Q. And you did just what he told you in the whole

(Testimony of David S. Bingham.)

transaction? A. Yes, sir.

Recross-examination.

(By Mr. TANNAHILL.)

Q. Now, Mr. Bingham, you had no talk with Mr. O'Keefe about selling to him further than he wanted the preference right of buying it?

A. Yes, sir, that was all; that is what I stated.

Q. And you had no talk about the price?

A. No, sir.

Q. And you could have sold it to anyone else you wanted to, if he would have given you more than Mr. O'Keefe? A. Yes, sir.

Q. Then you had no understanding with him that you would deed the land to him?

A. Nothing only me being working for him and the like of that why he wanted the right for it; that is, the first right; and I told him I would give it to him. I could have sold it to anybody, though, as far as that is concerned.

Q. Now, you just told Mr. Gordon that you understood that you was to deed it over to O'Keefe.

A. I didn't tell him anything of the kind, that I was to deed it over to him, or anything of the kind. I told you he had the prior right to it, or the preference.

Q. Well, you just said, in reply to Mr. Gordon's question, you told him—

A. Yes, that was the understanding, that if I sold to him I was [1027—697] to deed it over, of course.

Q. How is that?

(Testimony of David S. Bingham.)

A. If I sold to him I was to deed it over to him.

Q. Then there was no understanding?

A. No understanding whatever; no.

Q. What you mean to be understood as saying is that if you wanted to sell it,—

A. I wasn't tied up with him so that I couldn't sell to anybody else. I could have sold to other parties if I had wanted to.

Q. And the only obligations you felt under to Mr. O'Keefe was to give him a preference right?

A. A preference right to buy; yes, sir.

Q. If he would have given you as much as anybody else you would have sold to him?

A. Yes, sir.

Q. And if he would not have given you as much as anybody else, you would have sold to anybody else?

A. Whoever would have given the most for it.

Q. Now, Mr. Bingham, there was no one knew the facts stated in that affidavit which you made except you, was there? A. What affidavit?

Q. The affidavit which you made for Mr. Rummens—sworn to before Mr. Rummens—that I showed you and that you read over?

A. I don't recollect ever signing that affidavit. If I did, it was never read to me.

Q. Now, don't you remember—

A. That is my signature on the affidavit all right.

Q. Don't you remember going to Mr. Rummens's office and he talking with you about it and you giv-

(Testimony of David S. Bingham.)

ing him the facts as he wrote the affidavit on the typewriter?

A. I never was in Mr. Rummens's office, because I don't like him well enough to be around with him.
[1028—698]

Q. You gave someone the facts that that affidavit was written up from, did you not?

A. Rummens might have wrote that affidavit from the dictation of Jack. O'Keefe, and Jack. O'Keefe might have fetched that to me, and I might have signed it without reading it, as I have signed lots and lots of papers up there while he was selling land.

Q. Well, you have testified, Mr. Bingham, that the affidavit was substantially correct, with the exception of a few things there that was mentioned?

A. Yes.

Q. And whoever wrote it must have got some of the facts from you.

A. No, I don't think they did. I know that I didn't dictate that affidavit at all to Rummens, because I never done no business with Rummens at all, only—

Q. And you have no recollection of signing it?

A. I have a faint recollection, but I don't know where I signed it, or when I signed it; but that is my signature.

Q. Well, you have some recollection of signing that affidavit? A. No, not necessarily I don't.

Q. Well, didn't you say you had a faint recollection in regard to signing it?

A. A faint recollection in regard to seeing it; yes,

(Testimony of David S. Bingham.)

sir. That signature I would know it in any man's country.

Q. You undoubtedly signed the affidavit?

A. I undoubtedly signed that affidavit. Whether O'Keefe gave it to me, or somebody else, I don't know; but I never signed it in George Rummens's office, I can tell you that.

Mr. GORDON.—Q. Did you ever offer to sell that claim to anybody else? A. No, sir. [1029—699]

**[Testimony of Edgar H. Dammarell, for
Complainant.]**

EDGAR H. DAMMARELL, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Edgar H. Dammarell?

A. Yes, sir.

Q. D-a-m-m-a-r-e-double l? A. Yes, sir.

Q. Where do you reside, Mr. Dammarell?

A. At Asotin, Washington.

Q. Where did you reside in April, 1904?

A. Cloverland, Washington.

Q. How old a man are you? A. 34.

Q. And were you married in 1904?

A. Yes, sir.

Q. And of what did your family consist at that time?

A. Well, that is a question I will have to refer to my wife. (Laughing.) I have now six children.

Q. And how old is the oldest one?

(Testimony of Edgar H. Dammarell.)

A. Either 11 or 12.

Q. You don't remember how many were living in April, 1904? A. 1904?

Q. That is ten years ago—or six years ago, I mean.

A. Six years ago? Three or four.

Q. What was your occupation?

A. At that time?

Q. Yes.

A. Why, practically none; that is, I was attempting farming on the homestead and place, and was attempting to farm.

Q. Had you got a patent to your homestead at that time?

A. No, sir; I was living on my homestead and making my proof. [1030—700]

Q. And was that the only employment you had?

A. Well, I was orcharding—an orchardist, you might say, you might call it.

Q. Did you work for other people in that place?

A. Yes, sir.

Q. What do you call an orchardist, one who picks fruit?

A. No; planting and taking care of the trees.

Q. And for what? How much a day did you receive for such service at that time?

A. I don't remember. I believe it was—I think it was \$2.50.

Q. A day? A. Yes, sir.

Q. Do you know Mr. Joseph H. Prentice?

A. Yes, sir.

Q. Is he a relative of yours?

(Testimony of Edgar H. Dammarell.)

A. A brother-in-law.

Q. Did you know Mr. Jackson O'Keefe at that time? A. Yes, sir.

Q. Was there any relation between you?

A. No, sir.

Q. Were you related to the Taylor boys?

A. No, sir.

Q. Now, you may state, I will ask you if you took up a timber claim in April, 1904?

A. I took up a timber claim; I think that was the date.

Q. Now, state whether or not you were induced by anyone to take up a timber claim.

Mr. TANNAHILL.—We object to any evidence of the witness in relation to taking up a timber claim, in so far as it relates to bills No. 406 and 407, upon the ground that the entry is not involved in these particular actions, and it is irrelevant and immaterial.

Mr. GORDON.—Read the question and then let him answer it, please. [1031—701]

The last question was thereupon repeated by the Reporter.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. Sir?

A. I just forget the exact particulars, but Mr. Taylor—Charles W. Taylor—was at Cloverland and he spoke to myself and Mr. Prentice about going up to take up a timber claim.

Mr. TANNAHILL.—Now, we object to any evidence of the witness as to a conversation with Jack-

(Testimony of Edgar H. Dammarell.)

son O'Keefe, upon the ground and for the reason that Jackson O'Keefe is now deceased, and is not a party defendant, and any conversation outside of the presence of the defendants is incompetent, irrelevant and immaterial.

The SPECIAL EXAMINER.—Go right on, Mr. Dammarell.

WITNESS.—He said he was going to take up a timber claim, and asked us (Mr. Prentice and I) if we thought that we would care to go up with them. I told him that in order to do so it would require some money, and that I didn't have it, and he said he didn't know but he thought perhaps his uncle would loan us the money.

Mr. GORDON.—Q. Who was his uncle?

A. That was Jackson O'Keefe. We understood that, and under those conditions I took up a claim.

Q. Now, at this conversation with Mr. Taylor, was anything said as to the value of these claims—what they would net you?

A. I don't remember. I presume there was. I don't remember.

Q. Well, at any other conversation with Mr. Taylor before you entered on the land, do you remember whether anything was said as to whether you would get a certain amount for your right or for your claim?

A. I am not sure about that conversation. Mr. Prentice and I have talked it over since, and Mr. Prentice and I don't agree as to what was said at that time. Now, whether his memory is right or

(Testimony of Edgar H. Dammarell.)

mine is I don't know. I wouldn't like to make a positive assertion as to that. [1032—702]

Q. Now, how long was that before you filed on the timber claim? A. Well, I don't remember.

Q. Well, you filed in April, and I will ask you whether or not you didn't go over the claim some time the previous October—the preceding October?

A. Yes, I think it was in October we was up there, I believe about the middle of October.

Q. Now, what arrangements were made after the first talk with Mr. Taylor?

A. Well, we made a loan—we made a loan from Mr. O'Keefe on my note.

Q. When did you make that?

A. Now, I don't remember the date.

Q. Didn't you make that the day after—just immediately after making your final proof?

A. I believe it was.

Q. Yes. A. I believe it was.

Q. Now, what arrangement had you relative to going to see this land?

A. Why, we went in with Mr. O'Keefe.

Q. No, but there was some arrangement made before you went in. State what transpired after you first talked with Mr. Taylor—Mr. Charles W. Taylor?

A. Well, I don't just remember how it lined up at that time, as to the date, but he made arrangements with Mr. O'Keefe to make the loan, in the event that he was satisfied with the timber, and we went in, and I think he made the loan after we came back, or just

(Testimony of Edgar H. Dammarell.)

before we made final proof; or, rather, not final proof—I guess you would call it final proof, though.

Q. Yes—when you paid your \$400.00 in the land office? [1033—703] A. Yes, sir.

Q. Now, did you see Mr. O’Keefe before you went to view the land? A. Yes.

Q. And what talk did you have with Mr. O’Keefe?

Mr. TANNAHILL.—The same objection, and upon the further ground that Mr. O’Keefe is now deceased, and not present to either affirm or deny the conversation, and that the Government is not permitted to use the evidence of the witness as to statements made by O’Keefe out of the presence of the defendants.

The last question was thereupon repeated by the Reporter.

WITNESS.—Why, we talked, I presume—it is so long since that it is impossible for me to remember exactly—but I presume we talked about the timber and the making of the loan. I suppose it was all satisfactory.

Mr. GORDON.—Q. Well, wasn’t anything said at that time about the disposition of the land?

A. No, nothing was said that I remember of. Of course I knew that you couldn’t dispose of the land until you had a Receiver’s Receipt.

Q. Yes, I am not asking about disposing of it, but I mean a tacit understanding or agreement as to what you should do after you got your final receipt?

A. No, sir.

Q. There was nothing said whatever?

(Testimony of Edgar H. Dammarell.)

A. Nothing said whatever.

Q. Now, who paid your expenses into the timber?

A. That was supposed to be included in the amount of money I borrowed from O'Keefe.

Q. Now, wait a minute. You hadn't borrowed any money from O'Keefe at that time?

A. Well, I had made arrangements to.

Q. How much did you arrange to borrow?

[1034—704]

A. I believe the amount was \$550.00.

Q. And he was to peddle that out to you just as the exigencies of the occasion required, was that it?

A. Well, it might be so.

Q. Well, not what it might be; isn't that the fact?

A. Well, that is the way it worked out, at least.

Q. And you went up to look at this land?

A. Yes, sir.

Q. And with whom did you go?

A. I went with O'Keefe and the Taylors—the two Taylor boys—and Prentice and myself.

Q. Now, the proposition that was made to you by Mr. Charles W. Taylor, as well as you remember it, is the one you accepted and proceeded upon; is that correct? A. Yes, sir.

Q. And as I understand, you went from Cloverland to Lewiston? A. Yes, sir.

Q. And from Lewiston to Asotin?

A. From Lewiston to Orofino.

Q. And from there to where?

A. To the timber.

Q. To the timber? A. Yes, sir.

(Testimony of Edgar H. Dammarell.)

Q. Now, who paid your expenses from Cloverland here? A. From Cloverland to Lewiston?

Q. Yes. A. I was under my own expense.

Q. And was that reimbursed you by Mr. O'Keefe when you arrived at Lewiston?

A. Not that I remember of.

Q. But you won't say that it was not?

A. No. [1035—705]

Q. Now, who paid for the railroad tickets for you to go from here to Orofino?

A. I think I paid my own ticket at that time.

Q. Now, do you just think, or do you know?

A. I wouldn't be positive as to that.

Q. Mr. Dammarell, I will ask you a leading question: Wasn't it your arrangement with Mr. O'Keefe that he would furnish all the expenses incidental to taking up this claim, and that you would give a note later for whatever the expenses would be?

A. Yes, that's true; but having railroaded myself for a number of years, and always being more or less around those places, I believe I purchased the tickets for the party, and I don't remember whether I purchased them with my own money for myself or not, but I think I seen to the baggage being checked, also. I had been baggageman for the Northern Pacific.

Q. Well, who gave you the money to purchase the tickets for the whole party?

A. Well, I don't remember; I think O'Keefe did.

Q. Were you sort of assisting him in conducting this party through?

A. Well, no more than I was more accustomed to

(Testimony of Edgar H. Dammarell.)

the handling of baggage and things of that kind pertaining to traveling, that I just took care of it for him.

Q. Then you went to Orofino, and who made the arrangements for the conveyance from Orofino to the timber?

A. Well, I expect it was Mr. O'Keefe; I don't know.

Q. You didn't pay any of the expense?

A. No, I didn't pay any.

Q. Now, do you remember who paid the expense of coming back? A. I don't know.

Q. You didn't pay your own, did you?

A. No. [1036—706]

Q. And who went over the timber with you besides this party that you left Lewiston with?

A. When we went in?

Q. Yes. A. It was Dwyer and Bliss.

Q. Did Mr. O'Keefe go with you? A. Yes.

Q. Clear up into the timber? A. Yes.

Q. And did Mr. Dwyer and Mr. Bliss take you around to the various corners of the land that you were to locate on? A. Well, I thought so.

Q. Well, don't you know whether they did or not?

A. Well, that's what I thought. I made the second trip to be sure that I was placed on the land that I thought was the place that I should be on.

Q. Well, on your second visit were you convinced that you were on the land the first time?

A. Well, I wasn't convinced. It was the first time that I had ever been in such a body of timber, and

(Testimony of Edgar H. Dammarell.)

I was at a little loss; but on the second trip I looked the corners up and I knew I had been to the right place.

Q. Well, you had been to the right place?

A. Yes, sir.

Q. When did you go the second time?

A. Let's see: I got here the day before the Fourth of July—but what year that would be—

Q. 1904?

A. Yes; I guess that would be the year.

Q. Got back where?

A. Got back here to Lewiston the day before the Fourth.

Q. What suggested you going up there to look at it the second [1037—707] time?

A. Well, I wanted to see. I didn't understand, in the first place, that we had to see each legal subdivision, and I wanted to see them, so as to know. I didn't understand what a legal subdivision is. I supposed it meant a subdivision of 640 acres, but I learned later that it was a subdivision of the 160.

Q. Who notified you of the time that you were to file on this land?

A. I don't remember; I couldn't say; it might have been Prentice or the Taylor boys.

Q. Were you very much interested in taking up a timber claim?

A. I was at that time particularly interested.

Q. You had no money of your own, had you?

A. No, sir; I had not.

Q. And were you to pay any interest on the money

(Testimony of Edgar H. Dammarell.)

you were to get from O'Keefe?

A. I believe the note called for eight or ten per cent.

Q. Did you pay any interest? A. No.

Q. You didn't? A. No.

Q. And on the way to look at the timber, do you remember discussing the timber claim with Mr. O'Keefe? A. Yes, sir.

Q. Do you remember whether or not the question was discussed whether they could enter into an agreement to sell timber land before proof?

A. No, sir; I don't remember if there was; in fact, he wouldn't be very likely to have discussed it with me, because I knew better, anyway.

Q. Well, how did he know you knew better?

A. Well, it was common knowledge that one could not sell until [1038—708] they procured a certificate; or at least it was with me.

Q. And you had never known Mr. O'Keefe before this, had you? A. Before this time?

Q. Yes. A. Oh, yes.

Q. Intimately?

A. I had known him for—I don't know how long. Let's see; I had known him for at least a year or more.

Q. Had you ever transacted any business with him? A. Yes, sir; I had.

Q. What kind of business?

A. I had bought 30 acres of land from him—irrigated lands.

Q. You had bought 30 acres from him?

(Testimony of Edgar H. Dammarell.)

A. Yes, sir; 20 acres of which I sold to my parents.

Q. And did he have a mortgage on it at that time?

A. There was a deed in escrow for a portion of it.

Q. How much had you paid?

A. My parents took up 20 acres themselves and paid cash. Or, they didn't pay cash exactly at the time; they paid it, after they received returns from their farm in the east, and I paid \$175.00, which was half of the money on the ten acres that I had purchased.

Q. And he was holding the deed in escrow at that time for you to pay the balance? A. Yes, sir.

Q. When did you pay the balance?

A. I don't remember the date.

Q. Was it the day you made the deed to him?

A. No—no.

Q. Was it just before then?

A. No. I can tell you pretty nearly. I never took up the escrow until I took it up at the Bank of Asotin County, I believe—I don't remember what month, but last year I paid the Bank of Asotin [1039—709] County and took it up.

Q. Just this last year? A. Yes, sir.

Q. And you paid them \$175.00?

A. Yes, sir; I paid them more than that.

Q. Well, and the interest? A. Yes, sir.

Q. That is, approximately? A. Yes, sir.

Q. Now, I show you timber and stone lands sworn statement signed Edgar H. Dammarell, dated April 25th, 1904, and ask you if you signed that paper and

(Testimony of Edgar H. Dammarell.)

filed it in the land office the date that it bears, at Lewiston?

A. I cannot positively swear to the date, but that is my signature, and I presume it is right.

Q. I show you notice of publication of the same date, and the nonmineral affidavit, and ask you if you signed the affidavit and filed that and the other paper on the date they bear—April 25th, 1904?

A. I can swear to the signature, and the date I presume is right.

Q. And you filed them at the same time in the land office? A. Yes, sir.

Q. I show you the testimony of Edgar H. Dammarell given on final proof, dated July 12th, 1904, and ask you if that is your signature to that paper?

A. Yes, sir.

Q. I show you the cross-examination of Edgar H. Dammarell, taken at the same time, and ask you if that is your signature? A. Yes, sir; it is.

Q. Who prepared those papers for you that I have shown you? A. I don't know who prepared them.

Q. Who attended to the preparation of them for you? [1040—710] A. O'Keefe did.

Q. And do you remember who paid your expenses from your home to the land office on that occasion?

A. I don't know; I suppose that was included in the—

Q. — final settlement? A. — final settlement.

Q. And do you remember how many days you were at the land office prior to filing?

A. I believe it was four or five days. Oh, no. No,

(Testimony of Edgar H. Dammarell.)

that's not right. I think it must—I don't remember. I was going to say two weeks. We was there a long while.

Q. And did you stand there at the land office all that time? A. Yes, sir.

Q. Sir? A. Yes, sir.

Q. What was the number of your position in that line—No. 1?

A. No, sir. I don't remember my number.

Q. How many people were ahead of you?

A. Possibly—I don't remember—possibly six.

Q. Do you remember who was directly in front of you?

A. I presume it was one of our boys from Cloverland—one of the Taylor boys or Prentice. It might have been Prentice.

Q. Do you remember who stood behind you?

A. An old man. I don't remember his name.

Q. Mr. Justice? A. Well, I don't remember.

Q. Did the gentleman have good eyesight, or was he blind?

A. Well, I don't remember. I wouldn't like to say.

Q. And do you remember where you first saw these filing papers which you have identified?

A. Yes, sir.

Q. Where? [1041—711]

A. In the office across the hall—I believe it was Smith's office.

Q. The first time you talked with Mr. O'Keefe, did I understand you to say you told him you didn't have money with which to make proof, and arrangement

(Testimony of Edgar H. Dammarell.)

was made then to get it from him? A. Yes, sir.

Q. Now, did you tell whose office you had these papers prepared in?

A. I don't remember whose office they were prepared in.

Q. Well, do you know whose office you got them from? A. They were in Smith's office.

Q. I. N. Smith's? A. Yes, sir.

Q. How did you happen to go to Smith's office to get them?

A. Mr. O'Keefe, I believe, went in with us at the time.

Q. And you filed them in the land office?

A. Yes, sir.

Q. And returned to your home, and in a month or so later why you came down to make your final proof? A. Yes, sir.

Q. Did you talk with Mr. O'Keefe between the time that you made your original filing and final proof about this claim? A. I presume I did.

Q. Well, do you have any recollection of what it was? A. Nothing definite.

Q. Do you remember when you were notified to come down and make your proof?

A. I believe the date was set by the notice. I don't remember, I believe it was.

Q. And did all of your party come together?

A. Yes, sir.

Q. You all went to the timber together, in the first instance? [1042—712] A. Yes, sir.

Q. You all came back together? A. Yes, sir.

(Testimony of Edgar H. Dammarell.)

Q. You all went to the land office to make your proof together? A. Yes, sir.

Q. Stood in the line together? A. I think so.

Q. And you all went to I. N. Smith's office together? A. I would not be sure about that.

Q. Well, were some of them—I understood you to say that Mr. O'Keefe took us to Mr. Smith's office?

A. Well, perhaps I did say that. I shouldn't have said it. Mr. O'Keefe and I went in there together, and I don't remember whether any of the rest of the party that went into the timber together was there.

Q. Then you all came together to make your final proof? A. Yes, sir.

Q. Do you remember who paid the expenses of that excursion?

A. That would be included, I presume,—

Q. The money was furnished you by Mr. O'Keefe, was it not? A. Yes, sir.

Q. Do you remember whether he gave you the money to pay the expense of the others that came down? A. No, sir.

Q. Was your hotel bill included in that, too?

A. Yes, sir; I presume so.

Q. And did you meet Mr. O'Keefe down here when you came to make proof?

A. I don't remember where I met him. In making final proof?

Q. Yes.

A. I wouldn't like to say positively where we met him. There was one trip we made down that I rode with him from Asotin to Lewiston; but whether that

(Testimony of Edgar H. Dammarell.)

was the final proof or not I wouldn't say. [1043—713]

Q. Did you get the money to make your proof here in Lewiston? A. Yes, sir.

Q. And who did you get it from?

A. From O'Keefe.

Q. And when did you come to Lewiston, with reference to the day you made proof—the same day, or the day before?

A. Now, I think that I had—the day I came to make proof, either in the advertisement or in the newspapers I seen that I had left out a letter. My full name is E. H. S., and I had signed it Edgar H. in one place, and being an alien I had to send back to North Dakota to get a copy of my citizenship papers. I don't remember the date, but that is the way it happened, and I think that at least was ten days, possibly ten days; I wouldn't swear to it.

Q. Now, when did you get the money with which you made your proof?

A. I got that the date set for the proof. I remember distinctly of that, of having carried it home with me to Asotin, and waiting until after giving the note.

Q. Now, where did you get this money from Mr. O'Keefe?

A. He gave it to me in the office—a little office to the left hand of the stairway as you come up the Lewiston National Bank building.

Q. Was it in the Directors' room of the Lewiston National Bank?

A. No, sir; it was on the second floor.

(Testimony of Edgar H. Dammarell.)

Q. The second floor? Was that Mr. Smith's office?

A. I don't think so. It may have been a portion of his office. I don't remember that there was anything there to indicate whose office it was.

Q. Now, was there any discussion there as to where you should say you received that money, or whose money it was? A. No, sir.

Q. There was nothing said?

A. No, sir. [1044—714]

Q. And you made your final proof with the money which Mr. O'Keefe gave you? A. Yes, sir.

Q. And do you remember how much he gave you on that occasion?

A. I don't remember positively. It seems to me it was something like \$400.00.

Q. And did you pay a location fee to anybody?

A. Yes, sir.

Q. When was that?

A. That was paid just before I went in to make my filing, I believe.

Q. Was it just before you made your filing, or just before you made your final proof?

A. Well, I won't swear to that.

Q. And did you ever give but the one note to Mr. O'Keefe? A. Just the one; that is,—

Q. In this transaction, I mean? A. Yes, sir.

Q. And were you told to whom to give the location fee? A. Yes—Dwyer located us.

Q. Well, was Dwyer there, or did you go and look him up?

A. Dwyer came out in the hall, and I gave him his

(Testimony of Edgar H. Dammarell.)

pay right in the hall.

Q. Just after O'Keefe had given you the money to pay it with? A. Yes.

Q. Do you remember the denomination of the money that Mr. O'Keefe gave you to pay that fee with? A. Yes, sir.

Q. What was it?

A. It was a hundred dollar bill.

Q. Do you remember whether it was a new hundred dollar bill or an old one? [1045—715]

A. I don't remember.

Q. Was it a crisp one? A. I don't remember.

Q. Now, I understood you to say you paid the money that Mr. O'Keefe gave you for final proof into the land office and made proof with it?

A. Yes, sir.

Q. How long after you made your final proof did you sell this land?

A. I sold the land the day following.

Q. And how much did you get?

A. I got \$150.00.

Q. Now, was that the first time you had ever talked about selling that land?

A. I had talked about selling it to my wife.

Q. Nobody else?

A. Well, I may have spoke about what I thought I could get for it.

Q. Now, to whom did you sell it?

A. I sold it to Jackson O'Keefe.

Q. And you got just exactly what Mr. Taylor told you you could get for it when he first talked with you?

(Testimony of Edgar H. Dammarell.)

A. That is the point that I don't positively remember what Mr. Taylor said. Mr. Prentice and I disagree as to what Mr. Taylor said at that time. We have talked it over several times, and I don't remember it as he does; possibly his memory is better than mine.

The SPECIAL EXAMINER.—Well, your best recollection is all you can give.

Mr. GORDON.—That's all we want, Mr. Dammarrell.

WITNESS.—Well, that's all I can give you.

Q. And I don't want you to testify to what Mr. Prentice's remembrance is.

A. Well, it is so long since there are things that I don't remember [1046—716] clearly, and I don't like to make statements positively.

Q. Now, state the circumstances surrounding your selling this land. State what took place the day you sold it.

A. Well, leading up to it, I was trying to make good fruit on 160 acres of dry land, and I was just as poor as I had ever been in my life, and with my family, and out of a position. I left a good position in the east, expecting to have one that would at least prove remunerative enough to support myself and wife and family until the property at Cloverland at that time would advance in value—practically an "eastern sucker"; and there was no way excepting manual labor, digging post holes and planting trees, and things of that kind.

Q. And you worked very hard at that, did you?

(Testimony of Edgar H. Dammarell.)

A. Yes, I certainly did; it was a case of support and making money honestly some way, and it was the only thing to do, and when this came up—this opportunity, as I thought,—why, I seized it.

Q. Now, who presented the opportunity?

A. Well, the first I learned of it was through the Taylors, and he told me that he thought I could possibly make the loan from Mr. O'Keefe.

Q. Now, this you are telling was before you took the land up? A. Yes.

Q. And as I understood you to say, you was poor and you needed the money?

A. I did—I needed it, all right.

Q. That was, as I understand, when Mr. Taylor first broached the subject to you? A. Yes, sir.

Q. This statement which you have just made?

A. Yes, sir.

Q. Now, at the time you sold and conveyed the land to Mr. O'Keefe I want to know the circumstances surrounding that transaction.

A. Well, I had accumulated some little bills—larger bills—[1047—717] possibly small in the eyes of some people—but something that worried me. I had accumulated a number of accounts in the way of provisions and clothing, and I debated the matter and talked it over with O'Keefe, and I had a friend in the East—it makes a long story of it—but on my judgment he had purchased some land at Cloverland, and he told me at any time that I needed money just to wire him or write him and he would make me a loan; or if I saw any business opportunity to let him know

(Testimony of Edgar H. Dammarell.)

and he would back me. The fact of my judgment proving so poor in the Cloverland proposition, I didn't like to take it up with him, and that left me so that I didn't have anybody to apply to to take care of my bills, and I thought the matter over and I thought I would write to him, to this friend of mine, and tell him that I had taken up a timber claim and borrow the money to take up this note.

Q. You intended to borrow money from your friend in the East to take up this note?

A. Yes, sir.

Q. How long was this note to run?

A. It was for a year, I believe; I wouldn't be sure.

Q. And was there any necessity to take it up right then?

A. Well, no more than to have it away from O'Keefe and have my title trusted only with the man that told me he could loan me money at any time; and I thought the matter over.

Q. Now, let me ask you, do you remember whether you didn't give the note to Mr. O'Keefe the day that you got the four hundred and some odd dollars?

A. Yes.

Q. That was the day it was?

A. That was the day.

Q. That was the day set for your proof?

A. Yes, sir.

Q. Which was about two weeks before you did make proof? A. I think so. [1048—718]

Q. The records show that.

(Testimony of Edgar H. Dammarell.)

A. Well, if the records show that I presume that's right.

Q. Now, proceed.

A. After thinking the matter over, and hearing so much of forest fires, I began to conclude—I came to the conclusion that if I didn't do so and if a forest fire ran through there it would practically leave the claim valueless, and put me in a worse position than before; and I decided I would sell it.

Q. So you went to Mr. O'Keefe, or did he come to you?

A. I don't remember; I couldn't say for certain. We talked it over. We rode from Lewiston together in a buggy.

Q. That was going home?

A. Coming home, after I had made my final proof.

Q. And did this conversation, or did this matter that you have been relating here, was that the subject of your conversation with Mr. O'Keefe going back from Lewiston? A. Yes, it was.

Q. You talked that over with him?

A. Yes, sir.

Q. Now, what did he say about it?

A. Well, he said he believed it would be a good proposition to hold on to, and he said if I could make the raise it would be satisfactory to him.

Q. All that he wanted, you understood, was to get his money back?

A. Yes, sir; I believe that was his idea.

Q. Now, you came to the conclusion, though, that you would sell it to him that day, did you?

(Testimony of Edgar H. Dammarell.)

A. Well, I about arrived at that conclusion in my mind.

Q. And you concluded the next day that you would? A. Yes, sir.

Q. And you did sell it to him?

A. Yes, sir, I did. [1049—719]

Q. And you got your \$150.00? A. I did.

Q. How did you arrive at the conclusion that there was \$150.00 coming to you?

A. Well, no more than he said that was all he would give.

Q. Now, who had kept the note of all the expenses that had been incurred in the taking up of this timber claim? A. Why, I presume he had.

Q. And you settled with him on his basis?

A. Yes, sir.

Q. I show you, Mr. Dammarell, a deed—the original deed—dated July 26th, 1904, made by Edgar H. Dammarell and wife Nellie M., conveying to J. O’Keefe, in consideration of one dollar, the north-east quarter of section 19, in township 38 north, of range 6 east, of Boise meridian, containing 160 acres, and signed, executed and acknowledged by Edgar H. Dammarell and wife before George W. Bailey, a notary public of Asotin, Washington, July 26th, 1904, and ask you if that is your signature to that deed?

A. Yes, sir.

Q. And that is your wife’s signature?

A. Yes, sir.

Q. And you both acknowledged it?

A. Yes, sir.

(Testimony of Edgar H. Dammarell.)

Mr. GORDON.—It is stipulated by and between the parties that the deed just identified by Mr. Edgar H. Dammarell was made, executed and acknowledged on July 26th, 1904, and that the same was filed for record in the office of the Recorder of Nez Perce County July 18th, 1906, at the request of the Lewiston National Bank, and recorded in Book 84 for the recording of deeds, at page 314.

Mr. TANNAHILL.—The defendants severally waive any further identification of the document offered, but object to the admission of the document in evidence in so far as the same relates to bills No. 406 and [1050—720] 407, upon the ground that the entry is not involved in either of these actions, and it is immaterial.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Edgar H. Dammarell, dated April 25th, 1904, the notice of publication of the same date, the nonmineral affidavit of Edgar H. Dammarell of the same date, the testimony of Edgar H. Dammarell taken on final proof, and the cross-examination of Edgar H. Dammarell at final proof, all of which papers have been identified by the witness, the testimony of the witnesses at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated July 25th, 1904, a certified copy of the patent issued to Edgar H. Dammarell, dated December 31st, 1904, all relating to the entry of the northeast quarter of section 19, in township 38 north, of range 6 east, of Boise meridian.

(Testimony of Edgar H. Dammarell.)

Mr. TANNAHILL.—The defendants severally object to any of the documents being admitted in evidence in support of bills No. 406 and 407, upon the ground that the entry is not involved in either of these actions. And the defendants severally object to the admission in evidence of any of the final proof papers in support of either of the said bills, upon the ground that they are irrelevant and immaterial. The defendants severally waive any further identification of the papers offered in evidence.

Said documents were thereupon marked by the Reporter as Exhibits 28, 28A, 28B, 28C, 28D, 28E, 28F, 28G, 28H, 28I, 28J, 28K, 28L, 28M, 28N, 28-O, and 28P.

Mr. GORDON.—Q. Mr. Dammarell, I will ask you whether or not when Mr. Taylor first spoke to you it wasn't your understanding that in accepting the money that Mr. O'Keefe had to advance you, you were to take up this claim and convey it to him, or to whomsoever he would suggest?

A. No, sir.

Q. I will ask you if you had any reason to believe that Mr. [1051—721] O'Keefe had to advance you all this money when there was nothing in it for him?

Mr. TANNAHILL.—We object to that as immaterial, and leading and suggestive, and calling for a conclusion of the witness and not a statement of fact.

The last question was thereupon repeated by the Reporter.

WITNESS.—I believe that Mr. O'Keefe would

(Testimony of Edgar H. Dammarell.)

have advanced that much money to me. We were friends.

Mr. GORDON.—Q. That he was just interested enough in you to put up this money for you?

A. Yes, sir, I think so.

Cross-examination.

(By Mr. TANNAHILL.)

Q. As I understand, you had no contract or agreement to sell your land to Mr. O'Keefe, or anyone else, at the time you filed your sworn statement, or at the time you made your final proof? A. No, sir.

Q. Then the affidavit you made at the time you filed your sworn statement, "that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true, was it?

A. It is true, as I understand the affidavit.

Q. And it was true at the time you made it?

A. Yes, sir.

Q. And at the time you filed your sworn statement?

A. Yes, sir. [1052—722]

Q. And at the time you made your final proof?

A. Yes, sir.

Q. Now, I understood you to say that Mr. O'Keefe

(Testimony of Edgar H. Dammarell.)

told you that you had better hold on to your land; that he thought it was a good investment, and it would be all right, or words to that effect?

A. Yes, sir; words to that effect.

Q. And did he not tell you when you wanted to sell it to him and when he did decide to buy it that he would give you \$700.00 for it, or \$150.00 over and above the fee?

A. I believe that was the true words, which netted me about \$100.00 or \$150.00.

Q. Now, didn't he also tell you that if you had an opportunity to sell it for more money, or could redeem the land within a year, he would give you an opportunity to do it? A. I beg pardon?

Q. Did he not also tell you that if you had an opportunity to sell it for more money, or could redeem the land within a year by paying him the money back that he had paid you, that you could do so?

A. Yes, sir, he did.

Q. That was your understanding?

A. That was my understanding.

Q. When you sold it to him? A. Yes, sir.

Q. Now, Jackson O'Keefe was a good man, was he not? A. Jackson O'Keefe was a good man.

Q. And was always willing to help his friends and his neighbors? A. Too much so.

Q. And he was always willing to help his friends and his neighbors? A. Yes, sir.

Q. And you believe that he would have furnished you that money, or he would have furnished his nephews that money, willingly, if they [1053—723]

(Testimony of Edgar H. Dammarell.)

had an opportunity to use it in that way?

A. Yes, sir, I believe he would.

Q. And you don't believe he would have asked any compensation for it, do you?

A. As a friend and as a man of poor business management I don't think he would.

Redirect Examination.

(By Mr. GORDON.)

Q. Have you made an affidavit for the defense in this case?

A. Ask the question, again, please.

Q. For any of the defense, or to be used for the defense in this case?

A. I made an affidavit at Asotin.

Q. Who did you make it for?

A. I made it for Mr. Miles—or Mr. Moore.

Q. Frank Moore, of the firm of Forney & Moore?

A. Yes, sir.

Q. When did you make that affidavit?

A. I don't remember the date.

Q. Wasn't it just before the trials at Moscow?

A. I don't remember.

Q. Have you a copy of that affidavit?

A. I have at home.

Q. Did he tell you what he wanted to use the affidavit for? A. I presume he did.

Q. Well, wasn't it in January, 1907, that you made that affidavit? A. It may have been.

Q. Do you remember who was with him when he came to see you?

A. I believe it was Mr. Rummens.

(Testimony of Edgar H. Dammarell.)

Q. Was the affidavit prepared when they came to your place? A. No, sir. [1054—724]

Q. Did you give them the facts and then they go out and write the affidavit and come back again?

A. How is that, please?

Q. Did you give them the facts and then they went off and prepared the affidavit and brought it back?

A. No, sir.

Q. Did they bring a typewriter along with them?

A. No, sir. I believe it was Mr. Rummens, or Mr. Shaughnessy; I believe it was Mr. Rummens, the County Prosecuting Attorney's office, and Mr. Moore, asked me those questions, and I answered them, and he prepared the statement.

Mr. TANNAHILL.—Here is the affidavit if you want to see it. (Handing same to witness.)

Mr. GORDON.—Q. In whose office was this?

A. At this Rummens; that was the County Prosecuting Attorney.

Q. Who else was in the office with you?

A. I don't remember.

Q. Was he in business with anyone at that time?

A. Mr. Rummens?

Q. Yes?

A. It was Rummens & Gose, I believe, or Gose & Rummens.

Recross-examination.

(By Mr. TANNAHILL.)

Q. Is that the affidavit that you signed for Mr. Moore in the presence of Mr. Rummens?

A. Yes, sir.